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Filing date: **04/20/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91175589
Party	Plaintiff HVL Cyberweb Solutions, Inc. HVL Cyberweb Solutions, Inc. ,
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Date	04/20/2007
Attachments	HVL v. Northpole First Amended Notice of Opposition.pdf ( 67 pages )(3177339 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE  
THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of service mark application Serial No. 78851360  
Filed: March 31, 2006  
For the mark PETER NORTH  
Published in the Official Gazette on December 12, 2006

Date: April 19, 2007

HVL CYBERWEB SOLUTIONS, INC.,

OPPOSER,

v.

ALDEN J. BROWN,

APPLICANT.

Opposition No. 91175589

**FIRST AMENDED NOTICE OF OPPOSITION**

HVL Cyberweb Solutions, Inc.,  
a Canadian corporation  
114 Dominion Street  
Montreal, Quebec Canada H3J2Z2

Pursuant to TBMP § 503.03 and Fed. R. Civ. Pro. 15(a), Opposer HVL Cyberweb Solutions, Inc. ("HVL") hereby files this First Amended Notice of Opposition.

HVL will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same. The grounds for opposition are:

- (1) Fraud; and
- (2) Likelihood of confusion.

1. Pursuant to 15 U.S.C. § 1063(a), "any person who believes that he would be damaged by the registration of a mark upon the principal register may, upon payment of the prescribed fee, file an opposition in the Patent and Trademark Office, stating the grounds thereof . . ."

2. An opposer “need not have exclusive rights in a mark in order to oppose its registration to another.” *Wilson v. Delaunay*, 44 C.C.P.A. 1019, 1021 (C.C.P.A. 1957).

3. On March 31, 2006, Alden Brown (“Brown”) filed an application with the United States Patent and Trademark Office seeking to register the service mark “Peter North.” (See Trademark/Service Mark Application, Principal Register attached to this First Amended Notice of Opposition as Exhibit “A.”)

4. Brown seeks to register the service mark “Peter North” for its use in “entertainment services, namely, providing an Internet web site featuring sexually explicit adult content videos, film clips, and photographs.” (See description of services on Exhibit “A.”)

**HVL opposes Brown’s registration of the name “Peter North”  
on the grounds of likelihood of confusion.**

5. The United States Patent and Trademark Office should refuse to register the service mark “Peter North” because it will create confusion, mistake and/or deception of consumers, as contemplated by 15 U.S.C. § 1052(d).

6. HVL is entitled to certain rights in the name “Peter North.” If Brown is granted a mark in the name “Peter North,” consumers will be confused, and are likely to mistakenly believe that HVL’s content is unauthorized, and/or that Brown’s use of the name “Peter North” and/or images of Peter North are somehow superior in right to that of HVL.

7. On July 23, 2002, HVL and North Pole Enterprises, Inc. (“North Pole”) entered into a Memorandum of Agreement (“Agreement”), signed by Applicant Alden Brown, on behalf of North Pole. (See the Agreement attached to this First Amended Notice of Opposition as Exhibit “B.”) Among other things, the Agreement granted HVL a lifetime license in content featuring adult entertainment star Alden Brown (aka “Peter North content”).

8. The Agreement also granted HVL a perpetual license to use Peter North content on Internet websites developed by HVL. The Agreement also stated that, even after the Agreement’s termination, HVL would “continue to use and shall have the right to continue to exploit, for commercial profit, the Web Content it has already edited and compressed.” (See Exhibit “B.”)

9. Pursuant to the terms of the Agreement, HVL developed a number of original adult entertainment websites featuring the name, pictures and video footage of “Peter North.” These websites contained the first commercial use of the name “Peter

North” in connection with web-based adult entertainment materials. Accordingly, Opposer has priority of use of the name Peter North.

10. Since approximately 2002, HVL has maintained and continues to maintain these and several other websites, each of which allow consumers to purchase sexually explicit adult videos containing the Peter North name and featuring Peter North. HVL was the first entity to commercially exploit the Peter North name in connection with web-based adult entertainment.

11. Brown’s registration of the name “Peter North” for the exclusive purpose of using it in internet websites featuring sexually explicit adult content videos will directly interfere with HVL’s existing contractual and common law trademark and ownership rights.

12. Brown’s Trademark/Service Mark Application, Principal Register document illustrates the potential likelihood for confusion here. HVL is contractually and otherwise entitled to use and exploit the name “Peter North.” However, the language used in Brown’s Specimen illustrates the likelihood of confusion here. The Specimen reads: “PETER NORTH ... WELCOME TO THE ONE & ONLY PETER NORTH OFFICIAL WEBSITE.” HVL has ownership and/or other rights in the name “Peter North” and in content containing the Peter North image; if Brown is permitted to go forward with his proposed registration, an internet-user will likely become confused by the “Peter North” name as used in both HVL’s context and in Brown’s proposed context.

**HVL opposes Brown’s registration of the name “Peter North”  
on the grounds of fraud.**

13. Brown acts fraudulently and in bad faith by using the trademark office’s registration process to circumvent the perpetual license granted to HVL by virtue of the Agreement.

14. In support of his Application, Brown submitted the following Declaration  
Signature:

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant ... **to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the**

**mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive ....**

(emphasis added).

15. HVL has existing rights to use the name "Peter North" in commerce. Brown knew of this right at the time of his signature to the Application. Brown's declaration of false statements to the contrary, submitted in support of his Application, constituted fraud and should result in denial of his Application.

16. Brown's attempt to register the name "Peter North" is part of his common scheme to defraud HVL, and to divest HVL of its rights under the Agreement.

17. Prior to April 2006, North Pole and Brown began breaching the terms of the Agreement by among other things, refusing to provide HVL with the documentation necessary to permit HVL to continue to use certain Web Content previously supplied by North Pole and Brown. (Under the Federal Labeling and Record-Keeping Law (also known as 18 U.S.C. § 2257), producers of sexually explicit matter must maintain certain records proving the age of performers to prove the all actors used in sexually explicit material are adults.)

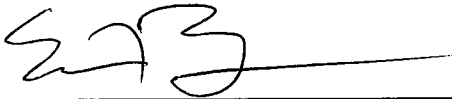
18. When North Pole and Brown failed to comply with the provisions of the Agreement, HVL filed a lawsuit in the Orange County Superior Court (Case Number 06CC04997) against Brown and North Pole. HVL later amended its lawsuit by filing an Amended Complaint ("HVL Lawsuit"). As detailed in the HVL Lawsuit, a dispute between HVL, North Pole and Brown arose regarding HVL's right to use and incorporate content provided by North Pole after North Pole terminated the Agreement despite the clear language of the Agreement that provides for this. (See HVL's Amended Complaint attached to this First Amended Notice of Opposition as Exhibit "C.")

19. Subsequently, Brown and North Pole filed a Cross Complaint in the HVL Lawsuit. Brown's Cross Complaint seeks to prohibit HVL from ever using "Peter North's name or content in any capacity" despite the clear language of the Agreement that affords HVL a perpetual license to content using Peter North's name and images. Both Brown's Cross Complaint and his application for registration of the name "Peter North" are part of a common scheme to defraud HVL, and divest HVL of its rights under the Agreement. (See Brown's Cross Complaint attached to this First Amended Notice of Opposition as Exhibit "D.")

20. In the Cross Complaint, Brown acknowledges that HVL operates several adult entertainment websites and that HVL entered into the Agreement with North Pole for purposes of developing Peter North related websites. Brown's Cross Complaint accuses HVL of unfairly competing with Brown and North Pole and intentionally trying to destroy Brown's "name, reputation, web presences, fan base and credibility in the adult entertainment industry. As a result of this alleged conduct, Brown seeks damages for "loss of reputation, loss of credibility, loss of customers, loss of fan base, loss of members, loss of interest, loss of business, loss of goodwill, loss of future revenue" and "loss of future business." (See Exhibit "D.")

21. For years, Brown has knowingly allowed HVL to use the name Peter North and images of Peter North to develop HVL's own websites and should be estopped from trying to prevent HVL from exercising its contractual rights to continue using that name and those images. HVL continues to operate several websites using Peter North content and the Peter North name.

22. For these reasons, valid grounds exist to deny Brown's application to register the mark PETER NORTH.

By:   
Steven A. Browne  
Attorney for HVL Cyberweb Solutions, Inc.,  
Opposer

Date: 4/19/07

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 20<sup>th</sup> day of April 2007 a true and accurate copy of the foregoing was served via first class mail to:

Kevin P. Steinman, Esq.  
Vip Bhola, Esq.  
Law Offices of Vip Bhola  
5429 Cahuenga Blvd.  
North Hollywood, CA 91601  
(818) 508-1500

Date: April 19, 2007

  
Steven A. Browne

## **CERTIFICATE OF E-FILING**

I hereby certify that this First Amended Notice of Opposition is being e-filed through the TTAB-On Line System of the Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451 on the 20<sup>th</sup> day of April 2007.

Date: April 19, 2007

A handwritten signature in black ink, appearing to read 'SAB', is written above a horizontal line.

Steven A. Browne

# **EXHIBIT A**



## Response to Office Action

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	78851360
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 105
<b>MARK SECTION (no change)</b>	
<b>OWNER SECTION (no change)</b>	
<b>LEGAL ENTITY SECTION (no change)</b>	
<b>GOODS AND/OR SERVICES SECTION (current)</b>	
INTERNATIONAL CLASS	041
DESCRIPTION	
ntertainment services, namely, providing an Internet web site featuring sexually explicit adult content videos, film clips, photographs, and other multimedia materials	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 04/07/1984
FIRST USE IN COMMERCE DATE	At least as early as 04/07/1984
<b>GOODS AND/OR SERVICES SECTION (proposed)</b>	
INTERNATIONAL CLASS	041
DESCRIPTION	
Entertainment services, namely, providing an Internet web site featuring sexually explicit adult content videos, film clips, and photographs	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 04/07/1984
FIRST USE IN COMMERCE DATE	At least as early as 04/07/1984
STATEMENT TYPE	"The substitute specimen(s) was in use in commerce as of the filing date of the application."
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT3\IMAGEOUT3\788\513\78851360\xml3\RO A0002.JPG
SPECIMEN DESCRIPTION	Graphic of "Peter North" as it is used in commerce
<b>ADDITIONAL STATEMENTS SECTION</b>	
NAME(S), PORTRAITS(S), SIGNATURE(S) OF INDIVIDUAL(S)	"The name(s), portrait(s), and/or signature(s) shown in the mark does not identify a particular living individual."
<b>SIGNATURE SECTION</b>	
DECLARATION SIGNATURE	/Alden Brown/
SIGNATORY'S NAME	Alden Brown
SIGNATORY'S POSITION	Owner

DATE SIGNED	09/27/2006
RESPONSE SIGNATURE	/Alden Brown/
SIGNATORY'S NAME	Alden Brown
SIGNATORY'S POSITION	Owner
DATE SIGNED	09/27/2006
AUTHORIZED SIGNATORY	YES
<b>FILING INFORMATION SECTION</b>	
SUBMIT DATE	Wed Sep 27 16:37:28 EDT 2006
TEAS STAMP	USPTO/ROA-24.24.129.150-2 0060927163728220169-78851 360-340a54ece37dfaffedd66 5a7748f09d0ba-N/A-N/A-200 60927162757173375

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USPTO/ROA-24.24.129.150-2

## Response to Office Action

### To the Commissioner for Trademarks:

Application serial no. **78851360** has been amended as follows:

#### Classification and Listing of Goods/Services

**Applicant hereby amends the following class of goods/services in the application as follows:**

Current: Class 041 for ntertainment services, namely, providing an Internet web site featuring sexually explicit adult content videos, film clips, photographs, and other multimedia materials

Original Filing Basis: 1(a).

Proposed: Class 041 for Entertainment services, namely, providing an Internet web site featuring sexually explicit adult content videos, film clips, and photographs

Filing Basis: 1(a).

**Section 1(a)**, Use in Commerce: The mark was first used at least as early as 04/07/1984 and first used in commerce at least as early as 04/07/1984, and is now in use in such commerce.

Applicant hereby submits a new specimen for Class 041.

The specimen(s) submitted consists of Graphic of "Peter North" as it is used in commerce.

For an application based on 1(a), Use in Commerce, "The substitute specimen(s) was in use in commerce as of the filing date of the application."

Specimen File1

#### Additional Statements

"The name(s), portrait(s), and/or signature(s) shown in the mark does not identify a particular living individual."

#### Declaration Signature

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii). If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods or services listed in the application as of the application filing date. 37 C.F.R. Secs. 2.34(a)(1)(i). The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's

knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /Alden Brown/ Date: 09/27/2006

Signatory's Name: Alden Brown

Signatory's Position: Owner

**Response Signature**

Signature: /Alden Brown/ Date: 09/27/2006

Signatory's Name: Alden Brown

Signatory's Position: Owner

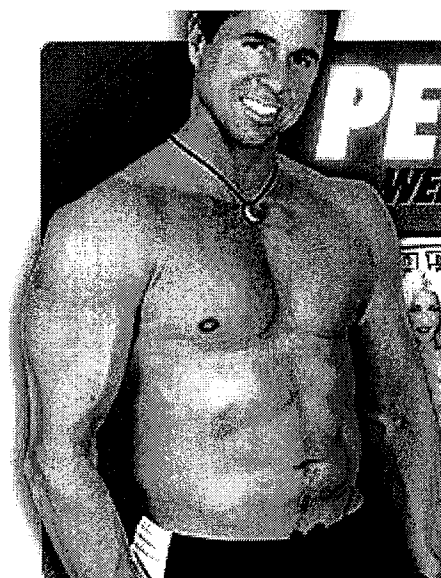
Serial Number: 78851360

Internet Transmission Date: Wed Sep 27 16:37:28 EDT 2006

TEAS Stamp: USPTO/ROA-24.24.129.150-2006092716372822

0169-78851360-340a54ece37dfaffedd665a774

8f09d0ba-N/A-N/A-20060927162757173375



# PETER NORTH

THE CUMSHOT LEGEND!  
WELCOME TO THE ONE & ONLY PETER NORTH OFFICIAL WEBSITE!



THE OFFICIAL SITE OF PETER NORTH

[PeterNorth.com](http://PeterNorth.com)

## **EXHIBIT B**

FROM :

FAX NO. :

Jul. 23 2002 03:12PM P1

**MEMORANDUM OF AGREEMENT ENTERED INTO BY AND BETWEEN**

**NORTH POLE ENTERPRISES INC.**, incorporate  
with head office at 3355 Beards Avenue, Tallahassee, Florida, 32318, USA herein represented by its duly  
authorised officer Mr. Alden Brown.  
(hereinafter referred to as the "Content Provider")

AND

**HVL CYBERWEB SOLUTIONS Inc.**, incorporated, with  
head office at 113 Place Fontainebleau, St-Lambert, J4S 1X6, Province of Quebec, Canada, herein  
represented by its duly authorised officer Mr. Claude  
Hypolite.  
(hereinafter referred to as the "Developer")

(the Content Provider and the Developer are hereinafter  
collectively referred to as the "Parties")

**WHEREAS** the Developer is responsible for the design and development of the "PETER NORTH"  
([www.peternorth.com](http://www.peternorth.com)) web site and other related sites (collectively hereinafter referred to as the  
"Web Site") containing the Web Content;

**WHEREAS** the Content Provider is responsible to provide original content such as text, photographs,  
images, audio sequences, video sequences and musical recordings, among others (hereinafter  
referred to as the Web Content);

**WHEREAS** the Content Provider has designed and will continue to design specific adult content  
which the Developer wishes to incorporate into the Web Site;

**WHEREAS** the Developer wishes the Content Provider to grant a life time non-exclusive license to it  
allowing the Developer to use and incorporate the said content into the Web Site;

**WHEREAS** the Content Provider has agreed to grant a said license to the Developer in accordance  
with the terms and conditions set forth herein below;

**WHEREAS** the Parties wish to evidence their agreement in writing;

**WHEREAS** the Parties are duly authorised and have the capacity to enter into and perform this  
Agreement;

**NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**1.00 PREAMBLE**

The preamble hereto shall form an integral part hereof.

**2.00 OBJECT**

**2.01 Grant of License**

Provided the Developer abides by each and every one of the provisions of this  
Agreement, the Content Provider shall grant to the Developer, an non-exclusive and

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life-time license giving it the following rights:

- a) the right to use and incorporate into the Web Site the content (hereinafter referred to as the "Web Content"); and
- b) any other right provided for in this Agreement
- c) the right to use under the terms of this contract to lease and sell;
- d) the right to modify, including the right to improve, translate and re-write into another language or in another manner;
- e) the right to adapt;
- f) the right to integrate and incorporate;
- g) the right to exploit;
- h) the right to perform;
- i) the right to distribute and cause the distribution;
- j) the right to broadcast;
- k) the right to communicate to the public by telecommunication;
- l) the right to perform in public;
- m) the right to reproduce;
- n) the right to transfer to another environment (hardware, software, computer, electronic, Web, multimedia or other);
- o) the right to institute legal proceedings, continue legal proceedings and defend oneself against legal proceedings in order to assert or defend all or part of the rights conferred pursuant to this Agreement; and
- p) the right to collect all income, revenues, royalties and payments as well as any damages, claims, amounts awarded pursuant to a judgment. The content provider will have the right to collect all revenue, royalties and payments with the exception of the leasing and selling of content.

#### 2.04 Duration of the Rights Conferred

The Intellectual Property Rights, Titles and Interests in and to the Web Content conferred by the Content Provider upon the Developer pursuant to this Agreement shall remain in effect indefinitely and for lifetime. However it is agreed that notwithstanding the termination of this agreement, Developer shall continue to have the specific rights granted to it with regards to content which has already been edited and compressed as per the term of this agreement.

#### 2.05 Geographical Scope of the Rights Conferred

The Intellectual Property Rights, Titles and Interests in and to the Web Content conferred by the Content Provider upon the Developer pursuant to this Agreement shall be valid worldwide, subject to the obligation to register such Right, Title or Interest in a given jurisdiction.

#### 2.06 Mandatory Incorporation

Notwithstanding any other provision hereof to the contrary, the above-mentioned rights as well as all other rights provided for in this Agreement shall be conferred upon the Developer only on condition that the Web Content is incorporated into the Web Site or any other web site hosted or administered by the Developer.

### 3.00 CONSIDERATION

AB	CH
Content Provider	Developer

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**3.01 Definitions**

For the purposes of these presents the following expressions shall have the following definitions;

Revenues: shall be defined as income generated from memberships and upsell;

Operation expenses: shall be defined as the aggregate of bandwidth fees, advertising and processing fees, technical and customer support

Profits: shall be defined as Revenues less operating expenses

**3.02 Profit sharing**

In consideration for the above-mentioned license, the Developer and the Content Provider shall share in the net profits generated by the pay sites and the reselling to webmaster of the Web Content as follows:

- a) Net profits generated from pay sites shall be divided 30% to Developer, 70% to Content Provider; and
- b) Net Profits generated from re-selling to webmasters shall be divided 50% to Developer and 50% to Content Provider.

**3.03 Capital expenditures**

It is agreed to by both parties that any further expenses, such as affiliate program, the employment of additional staff deemed necessary to render the pay sites of [www.peternorth.com](http://www.peternorth.com) more profitable shall be made only if the content provider agrees to such decisions. If such a decision is made the cost shall be paid out of the revenues generated.

**4.00 SPECIFIC PROVISIONS****4.01 Representatives of the Parties**

Each of the Parties acknowledges that the person designated by it in this agreement shall have full authority to take all steps, make all decisions and give all consents required with respect to the performance of this Agreement.

**4.02 Electronic Communications**

The Parties' representatives may communicate between themselves by electronic means or by telephone and/or by telecopier.

**4.03 Obligations of the Content Provider**

The Content Provider undertakes as follows in favour of the Developer:

- a) it shall supply and deliver to the Developer web content including pictures and videos as well as special footage such as video presentations, biographies and special pictures
- b) the Content Provider shall also take all reasonable steps to mark and identify with the web site address [www.peternorth.com](http://www.peternorth.com), any other product (such as DVD's or VHS) which it could sell or distribute or have sold or distributed by third parties.

**4.04 Obligations of the Developer**

The Developer undertakes as follows in favour of the Content Provider:

- a) it shall provide software and hardware to develop, program and design the web site;
- b) it shall edit and compress all videos and pictures provided by the Content Provider;
- c) it shall provide indexation of the search engines;

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Content Provider	Developer



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- d) it shall see to the promotion and advertising of the site with free videos, banners, etc.
- e) It shall inform the Content Provider forthwith of any defect or problem affecting the Web Content and it shall actively participate in identifying and seeking a solution to the problem;

#### 4.05 Intellectual Property

##### 4.05.01 Definitions

For purposes of this Agreement:

- "Intellectual Property Right, Title and Interest" shall include, without limitation, any intellectual property right, title and interest, including any derivative right, moral right and personal right, in and to the following:
  - a) any work, performance, picture, videotaping, invention, trademark, integrated circuit topography, confidential information or trade secret, as the case may be;
  - b) any certificate which registers, grants or acknowledges ownership or interests in any of the intellectual rights in question; and
  - c) any request for the registration, granting or acknowledgement of ownership or interests in any of the intellectual property rights in question.

##### 4.05.03 Respect of Third Party Intellectual Property (By the Content Provider)

The content of the Web Content shall be entirely original and shall not infringe any third party Intellectual Property Right, Title or Interest. If all or part of the content have been designed, in whole or in part, by a third party, or if a third party has an Intellectual Property Right, Title or Interest in and to such content, the Content Provider shall obtain the appropriate rights allowing it, among others, to use the said content (or part thereof) and to assign the right to use and modify same to the Developer, if applicable. If the Content Provider fails to abide by all or part of any of the obligations set forth hereinabove, it shall do the following:

- a) it shall indemnify the Developer from and against any damages suffered by it;
- b) it shall take up the defence of the Developer if the latter is impleaded in, or made a party to, any legal proceedings instituted by a third party and alleging the actual or threatened infringement or unlawful use of any Intellectual Property Right, Title or Interest, and the Content Provider shall indemnify the Developer and hold it harmless from and against the principal amount and interest of any monetary order which is issued, as well as from and against all judicial and extrajudicial costs incurred by the Developer as a result thereof; and
- c) it shall replace the content used unlawfully with completely original content or with content with respect where to the Content Provider has an Intellectual Property Right, Title or Interest, which content shall have the same functions as the unlawful content, the whole forthwith and at the Content Provider's expense.

##### 4.05.04 Specific Undertakings of the Developer

The Developer undertakes as follows in favour of the Content Provider:

- a) it shall not, directly or indirectly, contest, usurp or infringe any of the Intellectual Property Rights, Titles and Interests of the Content Provider or third party developers, nor shall it participate in or facilitate the commission of such acts;
- b) it shall not lease, lend or publish the Web Content, give access thereto or otherwise make same available to anyone whomsoever, except in accordance with the provisions of this Agreement;
- c) it shall not use, register or file an application for the registration of any trademark which causes confusion or is likely to cause confusion with any trademark belonging to the

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Content Provider	Developer

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Content Provider or third party developers, nor shall it participate in, or facilitate the commission of such acts;

- d) it shall respect all Intellectual Property Rights, Titles and Interests belonging to the Content Provider, third party developers and all other third parties;
- e) it shall comply with all applicable laws, regulations, treaties and restrictions, in particular those relating to the export of certain Web Sites;
- f) it shall comply with all of the Content Provider's requirements and policies regarding the protection of the Intellectual Property Rights, Titles and Interests of the Content Provider or third party developers in and to the Web Content and the trademarks, as well as in and to any confidential information or materials;
- g) it shall notify the Content Provider forthwith of any real or threatened infringement of any Intellectual Property Right, Title or Interest belonging to the Content Provider or to third party developers of which the Developer is aware.

#### 4.05.05 Consequences of Failing to Comply with Undertakings

Subject to all the Content Provider's other rights and recourses, the Content Provider shall be entitled to terminate this Agreement, without notice or demand, in any of the following cases:

- a) if the Developer does not comply with all or part of its undertakings as set forth hereinabove; or
- b) if the Developer does something or fails to do something such that the consequences of such commission or omission adversely affect or are likely to adversely affect the Intellectual Property Rights, Titles and Interests of the Content Provider, third party developers or other third parties.

However, it is agreed that notwithstanding the termination of this agreement for any reason whatsoever, the Developer shall be entitled to continue to use and shall have the right to continue to exploit, for commercial profit, the Web Content it has already edited and compressed. In this case all profits generated by the pay sites or the webmaster re-selling, shall be distributed 50%-50% between the Developer and the Content Provider.

#### 4.05.06 References to Intellectual Property Rights and Credits

References to intellectual property rights and credit for development of the Web Content by the Content Provider shall comply with the Content Provider's specifications.

#### 4.05.07 Protection of Intellectual Property Rights Vested in the Developer

The Content Provider shall provide its reasonable assistance to the Developer, at the latter's expense, as regards the Developer's efforts to protect or assert any Intellectual Property Right, Title or Interest which the Developer may acquire pursuant to this Agreement. In particular, but without limiting the generality of the foregoing, the Content Provider shall sign any document and provide any authorization or consent:

- a) which gives full effect to any grant, assignment or waiver of an Intellectual Property Right, Title or Interest in favour of the Developer or any person designated by it; and
- b) which allows the Developer or any person designated by it to obtain confirmation of such Intellectual Property Right, Title or Interest, in any country whatsoever.

#### 4.06 Confidentiality and Non-Disclosure Undertaking

The Developer acknowledges that certain Information Elements provided and to be provided by the Content Provider are or may be significantly strategically important and, therefore, constitute trade secrets for purposes of this Agreement. During the term of this Agreement and for a further period of SIX (6) months following the termination thereof, the Developer undertakes to do the following in favour of the Content Provider, except as regards the information Elements which are to be posted on the Content Provider's Web site and those forming part of the public domain:

AB	CH
Content Provider	Developer

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- a) it shall keep the Information Elements confidential and not disclose same;
- b) it shall take and implement all appropriate measures to preserve the confidential nature of the Information Elements;
- c) it shall not communicate, transmit, exploit or otherwise use the Information Elements, whether for its own behalf or on behalf of third parties; and
- d) it shall take all appropriate measures to ensure that its partners, shareholders, directors, representatives, agents, mandataries, officers, employees and related persons maintain the confidential nature of the Information Elements for the Content Provider's exclusive benefit.

Moreover, the Developer shall not mention to a third party or discuss with a third party the existence of this Agreement or its object or content, unless the Developer has obtained the Content Provider's prior written authorization (which authorization may be refused without reason) or unless such mention or discussion is made or carried out in accordance with the provisions of this Agreement.

#### 4.08 Reciprocal Undertaking Not to Solicit Personnel

During the term of this Agreement and for a further period of TWELVE (12) months following its termination, each of the Parties shall not, directly or indirectly, solicit, employ, hire or otherwise retain the services of any of the other Party's employees. If a Party fails to abide by this obligation, it shall immediately pay to the other Party, as a penalty, an amount equal to TWELVE (12) months of remuneration for the employee in question at the time of the default.

#### 4.10 Representations and Warranties of the Content Provider

The Content Provider represents and warrants as follows in favour of the Developer:

- a) it has the capacity to bind itself pursuant to this Agreement, which capacity is not limited in any manner whatsoever by any undertaking whatsoever in favour of a third party;
- b) it is the sole owner, with good and valid title, of all the Intellectual Property Rights, Titles and Interests in and to the Web Content;
- c) its Intellectual Property Rights, Titles and Interests are not been contested, in whole or in part, by anyone whomsoever at the time of signing of this Agreement;
- d) it is the only one responsible for the validity of its Intellectual Property Rights, Titles and Interests;
- e) it is not a party to any agreement which is likely to affect the Web Content or the Content Provider's Intellectual Property Rights, Titles and Interests in and to the Web Content;
- f) the Web Content and the Content Provider's Intellectual Property Rights, Titles and Interests in and to the Web Content are free and clear of all hypothecs, mortgages, liens, security, liens, seizures and other charges whatsoever which might encumber them;
- g) it is the only one responsible for the design, development, operation and performance of the Web Content;
- h) the Web Content shall operate properly and in accordance with the Specifications, subject to any minor corrections which may be required from time to time;
- i) the Web Content shall execute the functions set forth in the documentation and perform in accordance therewith;
- j) the Web Content shall comply with all applicable laws, regulations, treaties and restrictions;
- k) the Web Content does not form part of the public domain;
- l) neither the Web Content nor any of its components shall infringe any third party Intellectual Property Right, Title or Interest;
- m) the Web Content does not allow anyone to damage or have unauthorized access to Web Sites, data or computer or telecommunications equipment.

AB	CH
Content Provider	Developer

- 7 -

**4.12 Limitation of Liability**

Except in the event of gross negligence on the part of the Content Provider, the Content Provider shall not be liable towards the Developer for any fault or any direct or indirect damage resulting therefrom, and the Developer shall indemnify the Content Provider and hold it harmless from and against all claims, including all claims under a warranty, in any of the following cases:

- modifications made to the Web Content by a person other than the Content Provider or a person reporting to the Content Provider;
- the loss of business opportunities or income relating to the use or failure to use the Web Content.

**4.13 Interest**

All amounts owed by the Developer to the Content Provider pursuant to this Agreement shall bear interest at a rate of TWELVE percent (12%) per annum as of their due date.

**4.14 Change of Tax Rates or New Taxes**

If the rate of any applicable tax is changed or if a new tax is added during the performance of this Agreement, any such new rate or new tax shall be applicable, and the total price shall be adjusted accordingly.

**5.00 GENERAL PROVISIONS**

Unless otherwise stated in this Agreement, the following provisions shall apply.

**5.01 "Force Majeure"**

Neither party shall be considered to be in default pursuant to this Agreement if the fulfillment of all or part of its obligations is delayed or prevented due to "force majeure". "Force majeure" is an external unforeseeable and irresistible event, making it absolutely impossible to fulfill an obligation.

**5.02 Severability**

If all or part of any section, paragraph or provision of this Agreement is held invalid or unenforceable, it shall not have any effect whatsoever on any other section, paragraph or provision of this Agreement, nor on the remainder of the said section, paragraph or provision, unless otherwise expressly provided for in this Agreement.

**5.03 Notices**

Any notice intended for either Party shall be deemed to be validly given if it is in writing and is sent by registered or certified mail, by bailiff or by courier service to such Party's address as set forth in this Agreement, or to any other address which the Party in question may have indicated in writing to the other Party. A copy of any notice sent by e-mail shall also be sent according to one of the above-mentioned delivery modes.

**5.04 Headings**

The headings in this Agreement have been inserted solely for ease of reference and shall not modify, in any manner whatsoever, the meaning or scope of the provisions hereof.

**5.05 Schedules**

The Schedules to this Agreement shall be deemed to form an integral part hereof if they have

AB	CH
Content Provider	Developer

NO	
Content Provider	Developer

- 8 -

been duly initialled by all the Parties.

**5.06 No Waiver**

Under no circumstances shall the failure, negligence or tardiness of a Party as regards the exercise of a right or a recourse provided for in this Agreement be considered to be a waiver of such right or recourse.

**5.07 Cumulative Rights**

All rights set forth in this Agreement shall be cumulative and not alternative. The waiver of a right shall not be interpreted as the waiver of any other right.

**5.09 Amendments**

This Agreement shall not be amended or modified except by another written document duly signed by all the Parties.

**5.10 Number and Gender**

Where appropriate, the singular number set forth in this Agreement shall be interpreted as the plural number, and the gender shall be interpreted as masculine, feminine or neutral, as the context dictates.

**5.11 No Right to Transfer**

Neither of the Parties may, in any manner whatsoever, assign, transfer or convey its rights in this Agreement to any third party, without the prior written consent of the other Party.

**5.12 Calculating Time Periods**

In calculating any time periods under this Agreement:

- a) the first day of the period shall not be taken into account, but the last one shall;
- b) the non-judicial days, i.e. Saturdays, Sundays and public holidays, shall be taken into account; and
- c) whenever the last day is a non-judicial day, the period shall be extended to the next judicial day.

**5.13 Currency**

The currency used for purposes of this Agreement shall be in American (US) dollars.

**5.14 Governing Law**

This Agreement shall be construed and enforced in accordance with the laws in force in the state of California.

**5.15 Election of Domicile**

The Parties agree to elect domicile in the judicial district of Los Angeles, California for the hearing of any claim arising with respect to the interpretation, application, performance, term, validity or effects of this Agreement.

**5.16 Counterparts**

Each counterpart of this Agreement shall be considered to be an original when duly initialled and signed by all the Parties, it being understood, however, that all of these counterparts shall constitute one and the same Agreement.

**5.17 Successors**

This Agreement shall bind the Parties hereto as well as their respective successors, heirs and

AB	CH
Content Provider	Developer

- 9 -

assigns.

#### 5.20 Language

The Parties hereto have expressly agreed that this Agreement as well as all other documents relating thereto be drawn up only in English. Les parties ont expressément convenu que ce contrat de même que tous les documents s'y rattachant soient rédigés en anglais seulement.

#### 6.00 EFFECTIVE DATE

This Agreement shall become effective as of the date of signing.

#### 7.00 TERM

The term of this Agreement shall be for TWELVE (12) months from the date of signing renewable annually, automatically at its anniversary date, unless one of the parties notifies the other party in writing, of its intention not to renew this agreement, at least THREE (3) months before the end of the initial term or at least THREE (3) months before the end of any renewal period thereafter.

#### 8.00 TERMINATION

##### 8.01 Grounds

This Agreement shall terminate in any of the following circumstances:

- a) upon the expiry of the period of protection afforded at law;
- b) upon the written consent of the Parties;
- c) if a Party fails to fulfil any of its obligations hereunder and does not remedy the default within a period of TWENTY(20) days following receipt by the said defaulting Party of a formal notice asking it to remedy the default or within such shorter delay as is provided for in this Agreement; or
- d) if either Party becomes bankrupt or insolvent, or ceases to carry on business.

##### 8.02 Effects

If this Agreement is terminated:

- a) any license conferred upon the Developer pursuant to this Agreement shall terminate immediately save and except for Developer's right to keep any edited and compressed scenes and the right to continue to use said scenes for commercial profitability on the internet; and
- b) any amount which is still owed to the Content Provider shall become payable immediately.

Nonetheless, termination of this Agreement shall not affect the rights or obligations of the Parties with respect to confidentiality, intellectual property, limitation of warranty or limitation of liability, which rights and obligations shall survive the termination of this Agreement.

##### 8.03 Obligations of the Developer

If this Agreement is terminated for any reason whatsoever, the Developer shall stop using the Web Site [www.petemorth.com](http://www.petemorth.com);

The Content Provider reserves all its rights and recourses against the Developer, including the right to seek an injunction and/or damages, if the Developer refuses or fails to fulfill any of the obligations set forth in this Article within the stipulated deadline.

AB	CH
Content Provider	Developer

FROM :

FAX NO. :

Jul. 23 2002 03:25PM P1

- 10 -

AND THE DEVELOPER HERETO HAS SIGNED AT MONTREAL, PROVINCE OF QUEBEC  
CANADA ON THIS 23 DAY OF July 2002.

THE CONTENT PROVIDER

Marie Lachance  
WITNESS MARIE LACHANCE

THE DEVELOPER

Claude Hyppolite  
PER: CLAUDE HYPPOLITE

AND THE CONTENT PROVIDER HERETO HAS SIGNED AT LOS ANGELES, CALIFORNIA U.S.A,  
ON THIS 23 DAY OF July 2002.

WITNESS

THE CONTENT PROVIDER

Alden Brown  
MR. ALDEN BROWN  
A.K.A. PETER NORTH

AB	CH
Content Provider	Developer

## **EXHIBIT C**



COPY

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
WEST JUSTICE CENTER

AUG 11 2006

ALAN SLATER, Clerk of the Court

BY: \_\_\_\_\_, DEPUTY

1 Raymond E. Hane III (SBN 149960)  
rhane@wallerlaw.com  
2 Steven A. Browne (SBN 214444)  
steven.browne@wallerlaw.com  
3 WALLER LANSDEN DORTCH & DAVIS, LLP  
520 S. Grand Avenue, Suite 800  
4 Los Angeles, California 90071  
Telephone: (213) 362-3680  
5 Facsimile: (213) 362-3679

6 Attorneys for Plaintiff HVL CYBERWEB SOLUTIONS,  
INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF ORANGE, WEST JUSTICE CENTER

BY FAX

11 HVL CYBERWEB SOLUTIONS, INC., a  
Canadian corporation,

12 Plaintiff,

13 vs.

14 ALDEN BROWN; NORTH POLE  
15 ENTERPRISES, INC., a Florida corporation;  
and DOES 1-100, inclusive,

16 Defendants.

) Case No. 06CC04997

) Judge: Hon. Mary Fingal Erickson  
Dept: W11

) **PLAINTIFF HVL'S FIRST AMENDED  
COMPLAINT**

) Complaint Filed: April 11, 2006

18  
19  
20 For its Complaint, Plaintiff HVL CYBERWEB SOLUTIONS, INC. ("HVL") alleges as  
21 follows:

22 **THE PARTIES**

23 1. Plaintiff HVL is a corporation organized and existing under the laws of Canada.  
24 HVL's principal place of business in Montreal, Quebec, Canada.

25 2. Defendant ALDEN BROWN ("BROWN") is an individual, and is a citizen and  
26 resident of the State of California.

27 3. HVL is informed and believes, and thereon alleges, that Defendant NORTH  
28 POLE ENTERPRISES, INC. ("NORTH POLE") is a corporation organized and existing

1 under the laws of the State of Florida, with its principal place of business in Newport Beach,  
2 California. HVL is informed and believes, and thereon alleges, that BROWN is an officer,  
3 director, and shareholder of NORTH POLE.

4 4. The corporate form should be disregarded so that BROWN is liable for all the  
5 obligations of NORTH POLE. Because of the improper domination and control exercised by  
6 the BROWN over NORTH POLE; the unity of interest between BROWN and NORTH POLE;  
7 the relationship between Defendants as principals-agents; the use of their relationships to  
8 achieve wrongful and inequitable results; and the status of NORTH POLE as an  
9 instrumentality and/or alter-ego of BROWN, both Defendants are liable for the wrongs of the  
10 other Defendant, without regard to corporate form or separateness.

11 5. BROWN treats of the assets of NORTH POLE as his own, holds himself out as  
12 personally liable for the debts of NORTH POLE, and uses NORTH POLE as a mere shell,  
13 instrumentality or conduit for his individual business. BROWN is the only party who  
14 negotiated the terms of the contract on behalf of NORTH POLE, and BROWN signed the  
15 agreement ostensibly on behalf of NORTH POLE. There is such a unity of interest between  
16 BROWN and NORTH POLE that the individuality, or separateness, of the two has ceased; the  
17 facts are such that an adherent to the fiction of the separate existence of the corporation would  
18 sanction a fraud or promote injustice.

19 6. Plaintiff is ignorant of the true names and capacities of Defendants sued as  
20 DOES 1 through 100, inclusive, and therefore sues these Defendants by these fictitious names.  
21 Plaintiff will amend this Complaint to allege their true names and capacities when they have  
22 been ascertained. Plaintiff is informed and believes and thereon alleges that each of the  
23 fictitiously named Defendants is in breach of some contract or is tortiously or otherwise legally  
24 responsible in some manner for the occurrences alleged in this complaint and for Plaintiff's  
25 damages. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each  
26 of the Defendants, including Does 1 through 100, inclusive, was the agent or employee of each  
27 of the remaining Defendants and, in doing the things alleged, was acting within the scope of  
28 that agency or employment.

1 FACTUAL BACKGROUND

2 7. HVL is the registered owner and host of certain related domains on the internet  
3 (collectively "the Website"). As such, HVL has the exclusive right to own and operate the  
4 Website.

5 8. HVL and NORTH POLE entered into a written Memorandum of Agreement (the  
6 "Agreement") on or about July 23, 2002, under which HVL was to design, develop, and  
7 market the Website, and NORTH POLE was to provide original content for the Website, "such  
8 as text, photographs, images, audio sequences, video sequences and musical recordings . . . ."  
9 A true and correct copy of the Agreement is attached to this Complaint as Exhibit A and is  
10 incorporated herein by reference. The Agreement was for a twelve-month term, which was  
11 automatically renewed for another twelve months every year unless a party gave three months'  
12 notice of the intent not to renew.

13 9. Under the terms of the Agreement, HVL was granted a nonexclusive lifetime  
14 license to, among other things, use and incorporate into the Website the content provided by  
15 NORTH POLE.

16 10. Under the terms of the Agreement, HVL is permitted to utilize in perpetuity any  
17 content provided to it by NORTH POLE, even if the Agreement is terminated.

18 11. Under the terms of the Agreement, the parties agreed to share the net profits  
19 generated by the Website and the reselling of content.

20 12. Under the terms of the Agreement, NORTH POLE was obligated to supply and  
21 deliver the necessary content to HVL for use in the Website. Ever since the date of the  
22 Agreement, the parties have engaged in a course of performance whereby NORTH POLE  
23 would deliver to HVL content on demand, and in sufficient amounts to maintain the Website as  
24 a viable commercial enterprise.

25 13. Under the terms of the Agreement, NORTH POLE specifically warranted and  
26 represented that all content provided to HVL would "comply with all applicable laws,  
27 regulations, treaties and restrictions." This included providing HVL with records in  
28 compliance with Title 18, section 2257 of the United States Code ("2257 Records").

14. Pursuant to section 2257, every producer of sexually explicit material, including NORTH POLE, is required to "create and maintain individually identifiable records pertaining to every performer portrayed in such a visual depiction." 18 U.S.C. § 2257(a); *see also* 28 C.F.R. Part 75 *et seq.* These record keeping laws apply to the content produced by NORTH POLE, and are necessary for HVL to make use of the content provided to it by NORTH POLE under the Agreement. Defendants have explicitly acknowledged that they are aware of these laws and regulations.

### DEFENDANTS' BREACHES

15. On or about December 16, 2005, Defendants purported to terminate the Agreement. Under the terms of the Agreement, the contract remained in effect until July 23, 2006.

16. Defendants ceased providing content to HVL before the termination of the Agreement.

17. Defendants have willfully refused to keep and provide HVL with compliant 2257 Records, thus precluding HVL from using content already provided to them by Defendants under the Agreement.

18. Defendants have demanded transfer of the Website to Defendants, despite the fact that HVL is the rightful owner of the Website, and have even sought and obtained a TRO to have the Website transferred to Defendants.

### FIRST CAUSE OF ACTION

#### [Breach of Contract – against all Defendants]

19. HVL hereby re-alleges Paragraphs 1 through 18 above and incorporates by reference the allegations contained in said paragraphs as though fully set forth here.

20. Plaintiff HVL has performed all conditions, covenants and promises required to be performed on its part in accordance with the terms and conditions of the Agreement, except those terms and conditions that were excused, waived or were otherwise unenforceable, or those for which performance has been prevented by the acts and/or omissions of Defendants.

21. Defendants have breached the Agreement by, among other things:

- Failing to provide content to HVL; and
- Willfully refusing to keep and provide to HVL the 2257 Records necessary to permit HVL to continue to use content already provided by NORTH POLE.

22. As a result of Defendants' breaches, Plaintiff has suffered, among other things, damages in an amount subject to proof at trial, including but not limited to lost profits and harm to the goodwill and reputation of Plaintiff and associated with the Website.

## SECOND CAUSE OF ACTION

**[Intentional Interference With Contract – against all Defendants]**

23. HVL hereby re-alleges Paragraphs 1 through 22 above and incorporates by reference the allegations contained in said paragraphs as though fully set forth here.

24. Defendants, NORTH POLE and BROWN, are familiar with the business dealings of HVL, and have knowledge of HVL's existing contracts and business relationships with customers of the Website, third-party webmasters, and online payment processors, including but not limited to, CCBill, LLC, and Paycom, LLC.

25. Despite knowing of these contracts and existing business relationships, Defendants, and each of them, intentionally interfered with those contracts and business relationships by: failing to provide content to HVL; willfully refusing to keep and provide to HVL the 2257 Records necessary to permit HVL to continue to use of content already provided by Defendants; and making demands of HVL in violation of these contracts, thereby causing permanent harm to HVL and to the Website.

26. Defendants are long-time members of the adult entertainment industry, and have extensive knowledge of the laws and business practices of the industry. Defendant BROWN was also formerly a Director and or Officer of HVL, and even helped negotiate the contracts with one or more of these third parties. Defendants are therefore well aware of the consequences that the actions alleged herein would have on HVL and its contractual

relationships with third parties, and intentionally acted with conscious disregard of HVL's rights.

27. As a direct result of Defendants' actions and omissions, Plaintiff has suffered, among other things, damages in an amount subject to proof at trial, including but not limited to lost profits and harm to the goodwill and reputation of Plaintiff and associated with the Website.

28. Defendants NORTH POLE and BROWN, having knowledge of HVL's contractual obligations, and without justification or privilege, acted with fraud, malice or oppression, and therefore, Plaintiff is entitled to an award of exemplary and punitive damages against Defendants, and each of them, in an amount according to proof.

### THIRD CAUSE OF ACTION

#### [Intentional Interference With Prospective

#### Business Advantage – against all Defendants]

29. HVL hereby re-alleges Paragraphs 1 through 28 above and incorporates by reference the allegations contained in said paragraphs as though fully set forth here.

30. Defendants, NORTH POLE and BROWN, are familiar with the business dealings of HVL, and have direct knowledge of HVL's existing contracts and business relationships with customers of the Website, third-party webmasters, and online payment processors, including but not limited to, CCBill, LLC, and Paycom, LLC.

31. Despite knowing of these ongoing business relationships, Defendants, and each of them, intentionally interfered with Plaintiff's prospective business advantage from the customers of the Website and third-party webmasters by: failing to provide content to HVL; willfully refusing to keep and provide to HVL the 2257 Records necessary to permit HVL to continue to use of content already provided by Defendants; and making demands of HVL harmful to these ongoing relationships, thereby causing permanent harm to HVL and to the Website.



1 37. As a direct result of Defendants' actions and omissions, Plaintiff has suffered,  
2 among other things, damages in an amount subject to proof at trial, including but not limited to  
3 lost profits and harm to the goodwill and reputation of Plaintiff and associated with the  
4 Website.

5  
6 **FIFTH CAUSE OF ACTION**

7 **[Breach of the Implied Covenant of**

8 **Good Faith and Fair Dealing – against all Defendants]**

9 38. HVL hereby re-alleges Paragraphs 1 through 37 above and incorporates by  
10 reference the allegations contained in said paragraphs as though fully set forth here.

11 39. Implied in the Agreement is Defendants' obligation to act fairly and in good faith  
12 with HVL so as not to deprive HVL of the fruits of the Agreement.

13 40. Defendants breached their obligation to act fairly and in good faith toward HVL  
14 by failing to provide content to HVL and refusing to provide to HVL the documentation  
15 necessary to permit HVL to continue to use content already provided by NORTH POLE.

16 41. As a direct result of Defendants' actions and omissions, Plaintiff has suffered,  
17 among other things, damages in an amount subject to proof at trial, including but not limited to  
18 lost profits and harm to the goodwill and reputation of Plaintiff and associated with the  
19 Website.

20 **SIXTH CAUSE OF ACTION**

21 **[Declaratory Relief – against all Defendants]**

22 42. HVL hereby re-alleges Paragraphs 1 through 41 above and incorporates by  
23 reference the allegations contained in said paragraphs as though fully set forth here.

24 43. An actual controversy has arisen regarding: (a) the rightful ownership of and the  
25 right to use the Website; (b) the amount of content required to be provided by Defendants  
26 under the Agreement; and (c) the obligation of Defendants to provide adequate documentation  
27 to permit Plaintiff to utilize the content provided by Defendants.



- 1 44. By reason of the foregoing controversy, Plaintiff respectfully requests that the  
2 Court make a judicial determination that:
- 3 a. Plaintiff may continue to use and enjoy the Website without interference of any  
4 type by the Defendants;
- 5 b. Defendants are required to provide a certain level of content to HVL, as  
6 established by previous conduct and custom of the parties, for the rest of the term  
7 of the Agreement; and
- 8 c. Defendants are obligated to provide adequate documentation to permit Plaintiff  
9 to utilize the content provided by Defendants.

10 45. Plaintiff is informed and believe, and on that basis alleges, that Defendants have  
11 taken a contrary position and have acted in a manner such that they assert that they have a right  
12 to ownership and use of the Website; do not have the obligation to provide content to HVL;  
13 and are not obligated to provide adequate documentation to permit Plaintiff to utilize the  
14 content provided by Defendants.

15 46. A judicial determination is necessary at this time in order for Plaintiff to resolve  
16 and settle their dispute with Defendants, as Plaintiff has no other prompt and expeditious  
17 remedy to protect Plaintiff's business and the Website.

18  
19 **SEVENTH CAUSE OF ACTION**

20 **[Injunctive Relief]**

21 47. HVL hereby re-alleges Paragraphs 1 through 46 above and incorporates by  
22 reference the allegations contained in said paragraphs as though fully set forth here.

23 48. Under the terms of the Agreement, NORTH POLE specifically warranted and  
24 represented that all content provided to HVL would "comply with all applicable laws,  
25 regulations, treaties and restrictions." This includes the section 2257 Record-keeping laws.

26 49. As herein alleged above, Defendants NORTH POLE and BROWN have failed  
27 and willfully refused to keep and provide HVL with 2257 Records for content provided to  
28 HVL by Defendants.

50. As herein alleged above, Defendants are maliciously withholding such records from HVL. Defendants have made it clear that they intend to persist in this conduct.

51. Defendants' wrongful conduct, unless and until restrained and enjoined by order of this Court, will cause great and irreparable harm to HVL.

52. HVL has no adequate remedy at law for the injuries threatened by Defendants' conduct as it will be impossible for HVL to determine the precise amount of monetary damages sufficient to compensate it for Defendants' attempt to thwart their obligation under the terms of the Agreement.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For general and compensatory damages according to proof, including lost profits and harm to goodwill;

2. For exemplary and punitive damages according to proof;

3. For interest at the rate of ten percent (10%) per annum, or the highest amount permitted by law, on any amounts due from Defendants to Plaintiff;

4. For a judicial declaration that Plaintiff may continue to use and enjoy the Website without interference of any type by the Defendants;

5. For a judicial declaration that Defendants are required to provide a certain level of content to HVL, as established by previous conduct and custom of the parties, for the rest of the term of the Agreement.

6. For a judicial declaration that Defendants are obligated to provide adequate documentation to permit Plaintiff to utilize the content provided by Defendants.

7. For a judicial declaration that Plaintiff has a lifetime license to commercially exploit and otherwise use the content provided by Defendants, pursuant to the terms of the Agreement.

1 8. For injunctive relief, ordering Defendants' to provide HVL with proper 2257  
2 Records for content already provided by NORTH POLE.

3 9. For costs and interest as allowed by law; and

4 10. For such further and other relief as the Court may deem proper.  
5

6 Dated: August 11, 2006

Respectfully submitted

7 WALLER LANSDEN DORTCH & DAVIS, LLP

8  
9 By: 

10 Raymond E. Hane III  
11 Attorneys for Plaintiff  
12 HVL Cyberweb Solutions, Inc.  
13  
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28

## STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

**SS.:**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 520 S. Grand Avenue, Suite 800, Los Angeles, California 90071.

On August 11, 2006, I served on the interested parties in said action the within:

PLAINTIFF HVL'S FIRST AMENDED COMPLAINT

by placing true copies thereof in a sealed envelope(s) addressed as stated below.

**Vip Bhola  
Law Offices of Vip Bhola  
5429 Cahuenga Blvd.  
North Hollywood, CA 91601**

tel (818) 508-1500  
fax (818) 508-1529

Attorney for Defendant Alden Brown

**Richard M. Foster**  
Law Offices of Richard M. Foster  
5429 Cahuenga Blvd.  
North Hollywood, CA 91601

tel (818) 508-1500  
fax (818) 508-1529

Attorney for Defendant  
North Pole Enterprises, Inc.

☒ (MAIL) I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 11, 2006, at Los Angeles, California.

Rosie A. Ortiz

(Type or print name)

(Signature)

## **EXHIBIT D**

SUMMONS  
(CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT: CROSS-DEFENDANT:  
(AVISO AL DEMANDADO):

HVL CYBERWEB SOLUTIONS, INC., A Canadian  
corporation; and ROES 1 THROUGH 100

YOU ARE BEING SUED BY PLAINTIFF: CROSS-COMPLAINANTS  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ALDEN BROWN; NORTH POLE ENTERPRISES, INC.

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
WEST JUSTICE CENTER

JUL 27 2006

ALAN SLATER, Clerk of the Court

BY: \_\_\_\_\_, DEPUTY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:  
(El nombre y dirección de la corte es):

CASE NUMBER: 06CC04997  
(Número del Caso):

ORANGE COUNTY SUPERIOR COURT, WEST JUSTICE CENTER  
8141 13th Street  
Westminster, CA 92683-4593

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Richard M. Foster SBN 93909- T:818-508-1500 VIP BHOLA, SBN 183980  
Law Offices of Richard Foster Law Offices VIP BHOLA 91601  
5429 Cahuenga Blvd. 5429 Cahuenga, N Hollywood, CA  
N Hollywood, CA 91601-2918

DATE: JUL 27 2006 ALAN SLATER, Clerk, by DONNA HONOMICHL, Deputy  
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify):

under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
other (specify):

4. ☐ by personal delivery on (date):

1 Richard M. Foster, Esq. (SBN 93909)  
2 Law Offices of Richard M. Foster  
3 5429 Cahuenga Blvd.  
4 North Hollywood, CA 91601  
5 (818) 508-1500 Fax (818) 508-1529

6 Attorneys for Cross-Complainant,  
7 NORTH POLE ENTERPRISES, INC.

8 Vip Bhola, Esq.  
9 Law Offices of Vip Bhola & Assoc.  
10 5429 Cahuenga Blvd.  
11 North Hollywood, CA 91601  
12 (818) 508-1500

13 Attorneys for Cross-Complainant,  
14 ALDEN BROWN

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF ORANGE - DEPT. W-11**

HVL CYBERWEB SOLUTIONS, INC.,  
a Canadian corporation,

Plaintiff,

vs.

ALDEN BROWN; NORTH POLE  
ENTERPRISES, INC., a Florida  
corporation; and DOES 1-100, inclusive,

Defendants.

ALDEN BROWN; NORTH POLE  
ENTERPRISES, INC.

Cross-Complainants,

vs.

HVL CYBERWEB SOLUTIONS, INC.,  
a Canadian corporation; and ROES 1-100

Cross-Defendant

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
WEST JUSTICE CENTER

JUL 27 2006

ALAN SLATER, Clerk of the Court

BY: \_\_\_\_\_, DEPUTY

CASE NO. 06CC04997  
[Before the Hon. Mary Fingal Erickson,  
Dept. W-11]

**CROSS COMPLAINT FOR:**

1. BREACH OF CONTRACT,
2. BREACH OF THE COVENANT  
OF GOOD FAITH AND FAIR  
DEALING,
3. MISAPPROPRIATION OF  
TRADE SECRETS,
4. UNFAIR BUSINESS PRACTICES,
5. UNFAIR COMPETITION,
6. INTENTIONAL  
INTERFERENCE WITH  
PROSPECTIVE ECONOMIC  
ADVANTAGE AND WITH  
CONTRACTS,
7. NEGLIGENT INTERFERENCE  
WITH PROSPECTIVE  
ECONOMIC ADVANTAGE AND  
WITH CONTRACTS, AND
8. ACCOUNTING;
9. INJUNCTION

1 Cross-Complainants, ALDEN BROWN; NORTH POLE ENTERPRISES, INC.,  
2 complain and allege as follows:

3 **FIRST CAUSE OF ACTION**

4 **FOR BREACH OF CONTRACT**

- 5 1. The true names and capacities, whether individual, corporate, associate or otherwise,  
6 of Cross-Defendants, ROES 1 through 100, inclusive, including each and every  
7 number between 1 and 100, and each of them, are unknown to Cross-Complainants  
8 who therefore sue said Cross-Defendants by such fictitious names. Cross-  
9 Complainants will seek leave of Court to amend this Cross-Complaint to show their  
10 true identities when the same have been ascertained.
- 11 2. Cross-Complainants is informed and believes, and upon such information and belief  
12 allege, that at all times mentioned herein, ROE Cross-Defendants were and now are  
13 individuals, corporations, partnerships, trusts and/or other business styled entities  
14 duly organized and existing under and by virtue of the laws of one of the states and  
15 were authorized to do, and did do, business within the State of California.
- 16 3. Cross-Defendant, HVL CYBERWEB SOLUTIONS, INC. (Hereinafter, "HVL") is  
17 a Canadian Corporation.
- 18 4. HVL operates several adult entertainment web sites. On July 23, 2002, HVL entered  
19 into a written MEMORANDUM OF AGREEMENT, Exhibit "A" (Hereinafter, "the  
20 Agreement") with Cross-Complainant, NORTH POLE ENTERPRISES, INC., a  
21 Florida Corporation (Hereinafter, "North Pole") authorized to do business in the State  
22 of California. The Agreement indicated that HVL was to be responsible for the  
23 design and development of the "PETER NORTH" ([www.peternorth.com](http://www.peternorth.com)) web site  
24 and other related sites. North Pole Enter was to provide content for the website.
- 25 5. The Agreement was for a twelve-month term, which was automatically renewed for  
26 another twelve months every year unless a party gave three months' notice of the  
27 intent not to renew, ¶ 7.00 of the Agreement. On or about December 16, 2005,  
28 Cross-Complainant, North Pole, gave the required three months' notice of



- 1 termination (and, indeed, gave 7 months instead of 3 months).
- 2 6. Under the terms of the Agreement, ¶ 3.02, HVL and North Pole shall share in the net  
3 profits generated by the pay sites and the reselling to webmasters of the web contents.  
4 The net profits generated from pay sites shall be divided 30% to HVL and 70% to  
5 North Pole, and net profits generated from re-selling to webmasters shall be divided  
6 50% to HVL and 50% to North Pole.
- 7 7. Upon termination of the Agreement, HVL agreed to pay immediately to North Pole  
8 any amount which is owed, ¶ 8.02(b) of the Agreement.
- 9 8. HVL failed to pay to North Pole the money owed to North Pole on a monthly basis.  
10 Under the terms of the Agreement, ¶ 3.02, HVL and North Pole were to share in the  
11 net profits generated by the pay sites and the reselling to webmasters of the web  
12 contents. However, Plaintiff paid themselves hundreds of thousands of dollars from  
13 February, 2006 through July 2006, and paid Cross-Complainant nothing. After  
14 learning that North Pole was going into court seeking a TRO that Plaintiff made a  
15 partial payment and has provided no proper accounting nor calculation for the entire  
16 contract period, reflecting sums received, number of paying subscribers, etc.
- 17 9. On several occasions, Defendants/Cross-Complainants have requested that these  
18 domain names be transferred to them, however, the demands were not responded to  
19 by Cross-Defendant. The latest correspondence between the parties was a letter sent  
20 on July 24, 2006, see Exhibit B.
- 21 10. Several previous letters were sent back and forth between the parties, attempting to  
22 resolve this matter.
- 23 11. Cross-Complainants has fully performed all acts, services, and conditions required  
24 by the agreement to be performed on its parts.
- 25 12. Despite Cross-Complainants' performance of all of the conditions to be performed  
26 by it in the manner and form demanded and agreed to by Cross-Defendants and  
27 pursuant to the terms and conditions of the agreements, Cross-Defendants, and each  
28 of them, with the knowledge, consent, approval, support and ratification of each and

1 every other Cross-Defendants, breached the terms, conditions and covenants  
2 contained therein by (1) failing to cease the use of Cross-Complainants' domain  
3 names, (2) failing to return the domain names, web sites and other related property  
4 to Cross-Complainants, (3) failing to pay Cross-Complainants for their share of  
5 profits as indicated in the agreement, (4) intentionally or negligently interfering with  
6 Cross-Complainants' prospective economic advantage and contracts with their fan  
7 base, other suppliers, web masters, and NetFame Solutions, Inc, (5) maliciously and  
8 intentionally trying to unfairly compete with Cross-Complainant in bad faith, (6)  
9 intentionally and maliciously trying to destroy Cross-Complainants' name,  
10 reputation, web presences, fan base and credibility in the adult entertainment  
11 industry.

12 13. As a direct and proximate result of the intentional, negligent, careless and unlawful  
13 conduct of these Cross-Defendants, and each of them, as above-described, Cross-  
14 Complainants have suffered and continue to suffer extensive pecuniary loss and  
15 harm, legal fees and costs, accounting fees and costs, loss of earning capacity, loss  
16 of reputation, loss of credibility, loss of customers, loss of fan base, loss of members,  
17 loss of interest, loss of business, loss of goodwill, loss of revenue, loss of future  
18 revenue, loss of future business, and other related financial and emotional distress  
19 and harm in an amount which is currently unknown to Cross-Complainants.

20 **SECOND CAUSE OF ACTION**

21 **FOR BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

22  
23 14. Cross-Complainants refer to paragraphs 1 through 13 above and, by such reference,  
24 incorporates them herein the same as though set forth in full.

25 15. The agreement breached by Cross-Defendants, Exhibit "A" contained an implied  
26 covenant of good faith and fair dealing. Also, under the applicable sections of the  
27 UCC, Cross-Defendants owed Cross-Complainants a duty of good faith and fair  
28 dealing. This is also the custom and practice in the adult entertainment internet

1 business. As a result of the relationships of the parties, Cross-Defendants owed  
2 Cross-Complainants a duty of good faith and fair dealing not to utilize in any way the  
3 confidential information, domain names, web information, fan base, membership  
4 information and contents that it had obtained from Cross-Complainants.

5 16. Cross-Defendants breached their duty of good faith and fair dealing and violated the  
6 covenant to deal fairly and in good faith with Cross-Complainants by doing the acts  
7 alleged herein. Cross-Complainants, at all times, performed their duties and  
8 obligations in good faith under the agreement referenced above.

9 17. As a direct and proximate result of the above breaches by Cross-Defendants, Cross-  
10 Complainants has suffered substantial damages. Each of the above acts by Cross-  
11 Defendants was accomplished with a conscious disregard and total indifference for  
12 the rights of Cross-Complainants and the consequential injuries and damages certain  
13 to be suffered by Cross-Complainants, and which were indeed suffered as herein  
14 described as a result of the wrongful conduct of Cross-Defendants.

15 **THIRD CAUSE OF ACTION**

16 **FOR MISAPPROPRIATION OF TRADE SECRETS**

17 **VIOLATION OF CALIFORNIA UNIFORM TRADE SECRETS ACT**

18 **(Cal. Civ. Code Sec. 3426)**

19  
20 18. Cross-Complainants refer to paragraphs 1 through 17 above and, by such reference,  
21 incorporates them herein the same as though set forth in full.

22 19. Cross-Complainants had a successful DVD and video business prior to dealing with  
23 Cross-Defendants. Due to his reputation in the adult film industry, Cross-  
24 Complainant's web site, [www.peternorth.com](http://www.peternorth.com), averaged 30 to 60 new members per  
25 day at the outset because the brand PeterNorth had been developed over a period of  
26 years.

27 20. Cross-Complainants have sold hundreds of thousands of physical DVDs and videos,  
28 many of which bear the watermark of my website, [www.peternorth.com](http://www.peternorth.com), and thus

1 promote that brand and website. Cross-Complainants estimate that they have sold  
2 between 150,000 to 400,000 DVDs and videos.

3 21. Cross-Complainants have several new projects and promotions that are in jeopardy  
4 and may be revisited and/or stopped due to the wrongful conduct of Cross-  
5 Defendants. Cross-Complainant, Peter North was supposed to start endorsing a new  
6 Natural Product with his new partner (NetFame Solutions Inc – Gamma), but it is part of  
7 a global deal that also includes promoting it along with www.peternorth.com.

8 22. Since the agreement is terminated, Cross-Complainants are no longer legally  
9 obligated to provide HVL with the new content that is produced. The members of  
10 PeterNorth.com who pay monthly fees for their subscription service will not like this  
11 disruption and Peter North's reputation will be irreparably harmed.

12 23. For over 22 years, Peter North has built his name, reputation, brand, etc. However,  
13 The Plaintiff/Cross-Defendant is stealing Cross-Complainant's identity, is engaged  
14 in commercial appropriation, and is preventing Peter North Enterprises, the owner,  
15 from using his own name and brand, as Plaintiff has redirected internet traffic from  
16 www.peternorth.com to Cross-Defendant's own unauthorized website – again  
17 misappropriating Peter North's name. As a result, Peter North's name will lose  
18 credibility with his fans and the webmasters in the adult industry on the Internet that  
19 promote his sites.

20 24. HVL's decision to breach the contract and refusal to pay Cross-Complainants their  
21 fair share, Cross-Complainants are losing more money on a daily basis.

22 25. The loss of income and opportunity has caused Cross-Complainant, Peter North  
23 severe emotional distress as well as financial and other practical difficulties.

24 26. Besides www.peternorth.com, Cross-Defendants also have control over the following  
25 domain names that are the rightful property of Cross-Complainants:

26 www.peterscumhots.com, www.peterscumshot.com, www.petercumshot.com,

27 www.peterscumshot.com, www.peterscumshots.ca, www.peternorth.com,

28 www.peterscumhots.com, www.peterscumshot.com, www.petercumshot.com,

1 [www.peterscumshot.com](http://www.peterscumshot.com), [www.peterscumshots.ca](http://www.peterscumshots.ca), [www.peternorthxxx.com](http://www.peternorthxxx.com),  
2 [www.peternorthPOV.com](http://www.peternorthPOV.com) [www.peternorth.ca](http://www.peternorth.ca) [www.clubpeternorth.com](http://www.clubpeternorth.com) and others that may  
3 not have been ascertained at this time.

4 The above domain names are currently operated or controlled by HVL, using Cross-  
5 Complainants' content.

6 27. Domain names, web site contents, identity of models, stars, members, pricing and  
7 all the related business property belong to Cross-Complainants and are being  
8 misappropriated by Cross-Defendants without compensation to Cross-Complainants.  
9 Cross-Complainants's customers, fans, members' lists, pricing, are all trade secrets  
10 and any information about Cross-Complainants' customers was proprietary,  
11 confidential, and trade secrets.

12 28. At the time that Cross-Defendants took the actions set forth herein, each of the Cross-  
13 Defendants knew and understood that Cross-Complainants' customers and all  
14 information concerning Cross-Complainants' customers were confidential and trade  
15 secrets. All of the actions referred to above and hereinafter were and are done with  
16 the specific intention of damaging Cross-Complainants financially and emotionally  
17 and to financially benefit each of the Cross-Defendants.

18 29. In furtherance of this common plan and scheme, Cross-Defendants, and each of  
19 them, refuse to relinquish control over the domain names, web sites, membership  
20 information, fan base and other proprietary and confidential information of Cross-  
21 Complainants. Also, Cross-Defendants refused to pay Cross-Complainants their fair  
22 share as agreed in the contract, nor provide a proper accounting for sums due.

23 30. Even more egregious is that Cross-Defendant has utilized confidential information  
24 and/or trade secrets which had been entrusted to Cross-Defendants by Cross  
25 Complainant and others for the financial benefit of Cross-Defendants and to the  
26 financial detriment of Cross-Complainant and others.

27 31. Cross-Defendant continuing use of trade secrets of Cross-Complainants through  
28 improper and illegal means as discussed supra is illegal and is in violation of

- 1 applicable laws and standards in the industry.
- 2 32. Through improper and illegal means, Cross-Defendants continues to use and profit
- 3 from Cross-Complainants's trade secrets.
- 4 33. Cross-Defendants have been unjustly enriched by the improper appropriation, use of
- 5 Cross-Complainants' trade secrets.
- 6 34. Cross-Complainants has suffered damages as a direct and proximate result of Cross-
- 7 Defendants' actions, which violated the California Uniform Trade Secrets Act.
- 8 35. The above actions of Cross-Defendants are willful, wanton and malicious, entitling
- 9 Cross-Complainants to an award of punitive damages.
- 10 36. Cross-Complainants seek actual damages in an amount to be proven, as well as
- 11 attorneys' fees, costs, unjust enrichment damages, prejudgment interest and an award
- 12 of punitive damages, to the extent allowed by law. As a matter of law, any damages
- 13 award must be doubled pursuant to the California Uniform Trade Secrets Act. The
- 14 misappropriation and use of Cross-Complainants's Trade Secrets violates *California*
- 15 *Civil Code* § 3426, et seq., entitling Cross-Complainants to restitution and damages.
- 16 Cross-Defendant acted willfully and maliciously, justifying an award of exemplary
- 17 damages from Cross-Defendant of twice Cross-Complainants's actual damages
- 18 pursuant to *California Civil Code* § 3426.3(c). Cross-Complainants are also entitled
- 19 to recover from Cross-Defendant its attorneys' fees incurred in this action.
- 20

21 **FOURTH CAUSE OF ACTION**

22 **UNFAIR BUSINESS PRACTICES**

- 23 37. Cross-Complainants refer to paragraphs 1 through 36 above and by such reference,
- 24 incorporates them herein the same as though set forth in full.
- 25 38. Cross-Defendant has committed acts of unfair competition as defined by *California*
- 26 *Business and Professions Code* §§ 17000, 17200, et seq., by engaging in the
- 27 following practices:
- 28 a. Misappropriating trade secret information from Cross-Complainants and

1 knowingly and improperly using that information to their advantage and to the  
2 detriment of Cross-Complainants in violation of the California Uniform Trade  
3 Secrets Act.

4 b. Breaching the contract and the fiduciary duties of loyalty, fair dealing owed to  
5 Cross-Complainants;

6 c. Intentionally or negligently interfering with prospective economic advantage and  
7 contracts of Cross-Complainants.

8 39. Cross-Defendant engaged in a pattern of misconduct, illegal and unlawful activities  
9 as described in this Cross-Complaint.

10 40. By virtue of the acts and omissions of Cross-Defendants, they have engaged in unfair  
11 competition within the meaning of *California Business and Professions Code* §  
12 17000, 17200, et seq, thereby entitling Cross-Complainants to restitutionary relief as  
13 provided by *California Business and Professions Code* §17203.

14 41. The aforementioned acts of Cross-Defendant were willful, oppressive and malicious,  
15 in that Cross-Defendant unfairly competed with Cross-Complainants with the  
16 deliberate intent to injure Cross-Complainants' business, reputation, credibility and  
17 presence on the internet. Cross-Complainants are therefore entitled to payment of  
18 damages in a sum sufficient to punish Cross-Defendants and to set an example and  
19 deter such conduct in the future.

20 **FIFTH CAUSE OF ACTION FOR**

21 **UNFAIR COMPETITION**

22 42. Cross-Complainants refer to paragraphs 1 through 42 above, and by such reference,  
23 incorporates them herein the same as though set forth in full.

24 43. As described above, Cross-Defendant has engaged in a variety of wrongful conduct  
25 against Cross-Complainants.

26 44. Cross-Defendant has been unjustly enriched, at Cross-Complainants's expense, as  
27 a result of Cross-Defendant's wrongful conduct.

28 45. As a direct and proximate cause of such unfair business practices, Cross-

- 1 Complainants has suffered substantial damages.
- 2 46. Cross-Defendant, HVL is a direct competitor of NetFame Solutions, Inc.-Gamma.
- 3 Both are Canadian companies who are in the same business, the adult internet
- 4 marketing business. HVL refuses to allow Peter North to terminate/not renew the
- 5 contract despite the fact that he gave them proper notice as required under the
- 6 agreement. Instead of accepting the consequences of a non-renewed/canceled
- 7 contract, they insist on destroying his name, business, credibility and image by
- 8 engaging in illegal, unethical and vindictive practices designed to force him into
- 9 signing up again with HVL despite the fact that HVL knows that he has already
- 10 signed up with their competitor, NetFame Solutions, Inc.-Gamma. These vindictive
- 11 and destructive tactics constitute unfair business practices, unfair competition and are
- 12 prohibited under California law.
- 13 47. Cross-Defendant has committed acts of unfair competition and unfair business
- 14 practices as defined by *California Business and Professions Code* §§ 17000, 17200,
- 15 et seq.
- 16 48. By virtue of the acts and omissions of Cross-Defendants, they have engaged in unfair
- 17 competition within the meaning of *California Business and Professions Code* §
- 18 17000, 17200, et seq, thereby entitling Cross-Complainants to restitutionary relief as
- 19 provided by *California Business and Professions Code* §17203.
- 20 49. The aforementioned acts of Cross-Defendant were willful, oppressive and malicious,
- 21 in that Cross-Defendant unfairly competed with Cross-Complainants with the
- 22 deliberate intent to injure Cross-Complainants' business, reputation, credibility and
- 23 presence on the internet. Cross-Complainants are therefore entitled to payment of
- 24 damages in a sum sufficient to punish Cross-Defendants and to set an example and
- 25 deter such conduct in the future.

26 SIXTH CAUSE OF ACTION

27 FOR INTENTIONAL INTERFERENCE WITH

28 PROSPECTIVE ECONOMIC ADVANTAGE



AND WITH CONTRACT

50. Cross-Complainants refer to paragraphs 1 through 49 above and, by such reference, incorporates them herein the same as though set forth in full.

51. Cross-Complainants had a viable adult entertainment business before contracting with HVL. With a conscious disregard for the rights of Cross-Complainants, and in conscious disregard of Cross-Complainants's business interest and prospective economic advantage, Cross-Defendants intentionally interfered with Cross-Complainants' business affairs and economic advantage by engaging in a common plan and scheme to defeat Cross-Complainants' rights in and to their business by, among other things, (1) refusing to give control of www.peternorth.com, a domain name that Cross-Complainant had prior to dealing with Cross-Defendants, (2) refusing to give up control of other domain names that belong to Cross-Complainants and are related to Peter North's image, movies and identity, (3) refusing to pay Cross-Complainants' their fair share of profits as agreed upon in the agreement, Exhibit "A", (4) refusing to honor the contract's termination clause, (5) interfering with Cross-Complainants' contract with NetFame Web Solutions, Inc despite the fact that ample notice was given to them that Cross-Complainant has cancelled the agreement with them and has entered into contract with NetFame Web Solutions, Inc., (6) interfering with Cross-Complainants' prospective economic advantage related to the sale of videos, DVDs and other products associated with the PeterNorth brand name, (7) interfering with Cross-Complainants' relationship and contracts with their web members, fans, and other third-party web masters, (8) exerting financial pressure on Cross-Complainants by instituting a frivolous action against them and withholding their money under the contract to force them to sign another contract with HVL and breaching their contract with NetFame.

52. Cross-Defendants had no legitimate business purpose in doing the aforementioned acts other than to do harm to Cross-Complainants and to financially and emotionally injure Cross-Complainants and for the financial benefit of Cross-Defendants.

1 53. When Cross-Defendants undertook these actions, Cross-Defendants knew, or should  
2 have known, that their actions were wrongful and in violation of Cross-  
3 Complainants's rights and that Cross-Defendants were (1) breaching the contract, (2)  
4 breaching the covenant of good faith and fair dealing, (3) misappropriating trade  
5 secrets and misusing confidential information that had been imparted to Cross-  
6 Defendants by Cross-Complainants in confidence, (4) interfering with contracts and  
7 prospective business advantage of Cross-Complainants.

8 54. In doing the things set forth herein, Cross-Defendants' actions were specifically  
9 designed to cause Cross-Complainants financial and emotional injury, to otherwise  
10 hurt, intimidate and do harm to Cross-Complainants and to destroy Cross-  
11 Complainants' business, name, credibility and earning capacity.

12 **SEVENTH CAUSE OF ACTION**  
13 **FOR NEGLIGENT INTERFERENCE WITH**  
14 **PROSPECTIVE ECONOMIC ADVANTAGE**  
15 **AND WITH CONTRACT**

16 55. Cross-Complainants refer to paragraphs 50 through 54 above, with the exception of  
17 any intentional conduct alleged and with the exception of punitive or exemplary  
18 damages alleged, and, by such reference, incorporates them herein the same as  
19 though set forth in full.

20 56. Cross-Defendants negligently did those things alleged above and herein.

21 **EIGHTH CAUSE OF ACTION**  
22 **FOR ACCOUNTING**

23 57. Cross-Complainants refer to paragraphs 1 through 13 above and incorporate them  
24 herein the same as though set forth in full.

25 58. The extent of receipts, billings and operations are within the exclusive possession and  
26 control of the Cross-Defendants herein, who have failed and refused to provide an  
27 accounting of all such profits. A fiduciary relationship exists between the Cross-  
28 Complainants and Cross-Defendants because the Cross-Defendants receive and hold  
all moneys generated pursuant to the contract at issue in this lawsuit, subject to

- 1 payment of Cross-Complainants' fair share of same by the Cross-Defendants.
- 2 59. Cross-Complainants demanded that Cross-Defendants provide a proper and complete  
3 accounting for all net profits generated by the pay sites and the reselling to  
4 webmasters of the web contents. However, Cross-Defendants and each of them have  
5 failed and refused to provide a proper and complete accounting so that the Cross-  
6 Complainant's fair share of the net profits can be determined, and have failed and  
7 refused to pay Cross-Complainant its fair share of the net profits.
- 8 60. Cross-Complainants refer to paragraphs 19 through 36 above and incorporate them  
9 herein the same as though set forth in full.
- 10 61. Pursuant to paragraphs 26 and 27 herein above, the Cross-Defendants have, and  
11 continue to, misappropriate Cross-Complainants' domain names, web site contents,  
12 identity of models, stars, members, pricing and all related business property without  
13 compensation to Cross-Complainants. Cross-Defendants have used its business and  
14 contractual relationship with Cross-Complainant to gain access to said confidential  
15 and secret information from Cross-Complainant and continue to use such secret and  
16 confidential information without authorization and for their own pecuniary gain and  
17 without compensation to Cross-Complainants.
- 18 62. Pursuant to paragraph 30 herein above, the Cross-Defendants, and each of them,  
19 refuse to relinquish control over the domain names, web sites, membership  
20 information, fan base and other proprietary and confidential information of Cross-  
21 Complainants and refuse to pay Cross-Complainants their fair share as agreed in the  
22 contract.
- 23 63. Cross-complainants have demanded an accounting for the unauthorized use of their  
24 confidential and secret domain names, web site contents, identity of models, stars,  
25 members, pricing and all related business property by Cross-Defendants. The  
26 amount of loss cannot be determined without an accounting of receipts and billing  
27 for Cross-Defendants' operations involving the unauthorized use of Cross-  
28 Complainants' domain names, web sites, contents, identify of models, stars,  
members.

1 NINTH CAUSE OF ACTION

2 PERMANENT INJUNCTION

3 64. Cross-Complainants refer to paragraphs 1 through 55 of this cross-complaint and, by  
4 such reference, incorporate them herein the same as though set forth in full.

5 65. Defendants/Cross-Complainants' request permanent injunctive relief as a result of  
6 the instant breach occurred by Plaintiff/Cross-Defendant, HVL CYBERWEB  
7 SOLUTIONS, INC., a Canadian corporation to the contract between the parties, as  
8 follows:

9 (1) To enjoin Plaintiff/Cross-Defendant from using, marketing, promoting or  
10 claiming Cross-Complainants' domain names, www.peternorth.com,  
11 www.peterscumhots.com, www.peterscumshot.com, www.petercumshot.com,  
12 www.peterscumshot.com, www.peterscumshots.ca, www.peterscumhots.com,  
13 www.peterscumshot.com, www.petercumshot.com, www.peterscumshot.com,  
14 www.peterscumshots.ca, www.peternorthxxx.com, www.peternorthPOV.com,  
15 www.clubpeternorth.com www.peternorth.ca and others that may not have  
16 been ascertained at this time

17 (2) To immediately transfer the above domain names to Defendants/Cross-  
18 Complainants;

19 (3) To cease using Peter North's name or content in any capacity, including  
20 redirecting traffic to any other website, including clubpeternorth.com;

21 (4) To immediately provide an accounting and release all the money due under  
22 the Agreement, which has been withheld by Plaintiff/Cross-Defendant, since  
23 on or about February, 2006.

24 (5) To immediately transfer the pre-existing domain names  
25 www.peternorth.com and www.peternorthxxx.com to North Pole Enterprises.

26 66. It appears clear that the numerous breaches of Plaintiff/Cross-Defendant and the  
27 refusal to surrender the domain names and money as required under the contract, that  
28 Defendant/Cross-Complainant have no other adequate remedy but to apply for this  
relief requested from this Court.

1  
2           **WHEREFORE**, Cross-Complainants prays for judgment against these Cross-  
3 Defendants, and each of them, as follows:

4  
5                           **FIRST AND SECOND CAUSES OF ACTION**

- 6           1. For general damages according to proof in an amount to be determined plus  
7 interest;  
8           2. For special damages according to proof;  
9           3. For lost profits and lost business opportunities resulting from the misconduct  
10 Cross-Defendants, according to proof at trial;  
11           4. For costs of suit incurred herein;  
12           5. For pre-judgment interest according to law; and,  
13           6. For such other and further relief as the court may deem just and proper.  
14

15                           **THIRD CAUSE OF ACTION**

- 16           1. Restitution pursuant to the equitable powers of this Court, Cross-Complainants  
17 prays that Cross-Defendants be ordered to restore to Cross-Complainants all funds  
18 acquired by means of any act or practice declared by this Court to be unlawful, unethical  
19 or fraudulent or disgorge all profits made thereby;  
20           2. For exemplary and punitive damages according to proof pursuant to California  
21 Civil Code § 3426.3(c);  
22           3. For attorneys' fees awardable under law, including, but not limited to, those  
23 available pursuant to *California Code of Civil Procedure* § 1021.5 and *California Civil*  
24 *Code* § 3426.3(c);  
25           4. For costs of suit incurred herein;  
26           5. For pre-judgment interest according to law; and,  
27           6. For such other and further relief as the court may deem just and proper.  
28

**FOURTH AND SEVENTH CAUSES OF ACTION**

1. For general damages according to proof plus interest or according to proof;
2. For special damages according to proof;
3. For lost profits and lost business opportunities resulting from the misconduct  
Cross-Defendant, according to proof at trial;
4. For exemplary and punitive damages according to proof;
5. For costs of suit incurred herein;
6. For pre-judgment interest according to law; and,
7. For such other and further relief as the court may deem just and proper.

#### **FOURTH AND FIFTH CAUSE OF ACTION**

1. Restitution pursuant to Business and Professions Code §§ 17203 and 17535, and pursuant to the equitable powers of this Court, Cross-Complainants prays that Cross-Defendant be ordered to restore to Cross-Complainants all funds acquired by means of any act or practice declared by this Court to be unlawful, unethical or fraudulent or to constitute unfair competition under Business and Professions Code §§ 17000, et seq and 17200 et seq. Or disgorge all profits made thereby;

2. For Preliminary Injunction and upon application, for a Temporary Restraining Order:

- (A) To enjoin Cross-Defendants from using, marketing, promoting or claiming Cross-Complainants' domain names, [www.peternorth.com](http://www.peternorth.com), [www.peterscumshots.com](http://www.peterscumshots.com), [www.peterscumshot.com](http://www.peterscumshot.com), [www.petercumshot.com](http://www.petercumshot.com), [www.peterscumshot.com](http://www.peterscumshot.com), [www.peterscumshots.ca](http://www.peterscumshots.ca), [www.peternorth.com](http://www.peternorth.com), [www.peterscumshots.com](http://www.peterscumshots.com), [www.peterscumshot.com](http://www.peterscumshot.com), [www.petercumshot.com](http://www.petercumshot.com), [www.peterscumshot.com](http://www.peterscumshot.com), [www.peterscumshots.ca](http://www.peterscumshots.ca), [www.peternorthxxx.com](http://www.peternorthxxx.com), [www.peternorthPOV.com](http://www.peternorthPOV.com); [www.clubpeternorth.com](http://www.clubpeternorth.com)
- (B) To immediately transfer the above domain names to Cross-Complainants;
- (C) To release all the money due under the Agreement, which is allegedly being held in a separate account for the benefit of Cross-Complainants to Cross-Complainants immediately.

1 3. For attorneys' fees awardable under law, including, but not limited to, those  
2 available pursuant to California Code of Civil Procedure § 1021.5.

3  
4 **SIXTH CAUSE OF ACTION**

- 5 1. For general damages according to proof;  
6 2. For special damages according to proof;  
7 3. For lost profits and lost business opportunities resulting from the misconduct  
8 Cross-Defendant, according to proof at trial;  
9 4. For costs of suit incurred herein;  
10 5. For punitive damages,  
11 6. For pre-judgment interest according to law; and,  
12 7. For such other and further relief as the court may deem just and proper.

13  
14 **FOR THE SEVENTH CAUSE OF ACTION**

- 15 1. For general damages according to proof;  
16 2. For special damages according to proof;  
17 3. For lost profits and lost business opportunities resulting from the misconduct  
18 Cross-Defendant, according to proof at trial;  
19 4. For costs of suit incurred herein;  
20 5. For pre-judgment interest according to law; and,  
21 6. For such other and further relief as the court may deem just and proper.

22  
23 **FOR THE EIGHTH CAUSE OF ACTION**

- 24 1. For an accounting of all revenues resulting from the contract at issue in this  
25 lawsuit;  
26 2. For general damages according to proof in an amount to be determined plus  
27 interest;  
28 3. For special damages according to proof;  
4. For costs of suit incurred herein;

- 1 5. For pre-judgment interest according to law; and,  
2 6. For such other and further relief as the court may deem just and proper.  
3

4 **FOR THE NINTH CAUSE OF ACTION**

5 1. For a permanent injunction:

- 6 (1) To enjoin Plaintiff/Cross-Defendant from using, marketing, promoting or  
7 claiming Cross-Complainants' domain names, www.peternorth.com,  
8 www.peterscumhots.com, www.peterscumshot.com, www.petercumshot.com,  
9 www.peterscumshot.com, www.peterscumshots.ca, www.peternorth.com,  
10 www.peterscumhots.com, www.peterscumshot.com,  
11 www.petercumshot.com, www.peterscumshot.com, www.peterscumshots.ca,  
12 www.peternorthxxx.com, www.peternorthPOV.com;  
13 www.clubpeternorth.com www.peternorth.ca and other presently  
14 unascertained domains using or referring to Peter North.  
15 (2) To immediately transfer the above domain names to Defendants/Cross-  
16 Complainants;  
17 (3) To cease using Peter North's name or content in any capacity, including  
18 redirecting traffic to any other website, including clubpeternorth.com;  
19 (4) To immediately provide an accounting and release all the money due under the  
20 Agreement, which has been withheld by Plaintiff/Cross-Defendant, since on or  
21 about February, 2006.  
22 (5) To immediately transfer the pre-existing domain names www.peternorth.com  
23 and www.peternorthxxx.com to North Pole Enterprises.  
24 2. For such other and further relief as the court may deem just and proper.  
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DATED: July 26, 2006

RESPECTFULLY SUBMITTED,  
LAW OFFICE OF RICHARD M. FOSTER



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By: \_\_\_\_\_  
RICHARD M. FOSTER,  
Attorneys for Cross-Defendant/Cross-  
Complainants, NORTH POLE  
ENTERPRISES, INC.

DATED: July 26, 2006

RESPECTFULLY SUBMITTED,  
LAW OFFICE OF VIP BHOLA &  
ASSOCIATES

By: \_\_\_\_\_  
VIP BHOLA,  
Attorneys for Cross-Defendant/Cross-  
Complainants, ALDEN BROWN

1 DEMAND FOR JURY TRIAL

2  
3 Cross-Complainants, hereby demands a jury trial as provided by Section 631 of  
4 the California Code of Civil Procedure.

5  
6 DATED: July 27, 2006

7 RESPECTFULLY SUBMITTED,  
LAW OFFICE OF RICHARD M. FOSTER

8  
9 By: Richard M. Foster  
RICHARD M. FOSTER,  
Attorneys for Cross-Defendant/Cross-  
10 Complainants, NORTH POLE  
11 ENTERPRISES, INC.

12 DATED: July 27, 2006

13 RESPECTFULLY SUBMITTED,  
LAW OFFICE OF VIP BHOLA &  
ASSOCIATES

14  
15 By: VIP Bhola  
VIP BHOLA,  
Attorneys for Cross-Defendant/Cross-  
16 Complainants, ALDEN BROWN  
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FROM :

FAX NO. :

Jul. 23 2002 03:12PM P1

## MEMORANDUM OF AGREEMENT ENTERED INTO BY AND BETWEEN

**NORTH POLE ENTERPRISES INC.**, incorporate  
with head office at 3355 Beards Avenue, Tallahassee, Florida, 33618, USA herein represented by its duly  
authorised officer Mr. Alden Brown.  
(hereinafter referred to as the "Content Provider")

AND

**HVL CYBERWEB SOLUTIONS Inc.**, incorporated, with  
head office at 113 Place Fontainebleau, St-Lambert, J4S 1X6, Province of Quebec, Canada, herein  
represented by its duly authorised officer Mr. Claude  
Hyppolite.  
(hereinafter referred to as the "Developer")

(the Content Provider and the Developer are hereinafter  
collectively referred to as the "Parties")

**WHEREAS** the Developer is responsible for the design and development of the "PETER NORTH"  
([www.peternorth.com](http://www.peternorth.com)) web site and other related sites (collectively hereinafter referred to as the  
"Web Site") containing the Web Content;

**WHEREAS** the Content Provider is responsible to provide original content such as text, photographs,  
images, audio sequences, video sequences and musical recordings, among others (hereinafter  
referred to as the Web Content);

**WHEREAS** the Content Provider has designed and will continue to design specific adult content  
which the Developer wishes to incorporate into the Web Site;

**WHEREAS** the Developer wishes the Content Provider to grant a life time non-exclusive license to it  
allowing the Developer to use and incorporate the said content into the Web Site;

**WHEREAS** the Content Provider has agreed to grant a said license to the Developer in accordance  
with the terms and conditions set forth herein below;

**WHEREAS** the Parties wish to evidence their agreement in writing;

**WHEREAS** the Parties are duly authorised and have the capacity to enter into and perform this  
Agreement;

**NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

### 1.00 PREAMBLE

The preamble hereto shall form an integral part hereof.

### 2.00 OBJECT

#### 2.01 Grant of License

Provided the Developer abides by each and every one of the provisions of this  
Agreement, the Content Provider shall grant to the Developer, an non-exclusive and

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- 2 -

life-time license giving it the following rights:

- a) the right to use and incorporate into the Web Site the content (hereinafter referred to as the "Web Content"); and
- b) any other right provided for in this Agreement
- c) the right to use under the terms of this contract to lease and sell;
- d) the right to modify, including the right to improve, translate and re-write into another language or in another manner;
- e) the right to adapt;
- f) the right to integrate and incorporate;
- g) the right to exploit;
- h) the right to perform;
- i) the right to distribute and cause the distribution;
- j) the right to broadcast;
- k) the right to communicate to the public by telecommunication;
- l) the right to perform in public;
- m) the right to reproduce;
- n) the right to transfer to another environment (hardware, software, computer, electronic, Web, multimedia or other);
- o) the right to institute legal proceedings, continue legal proceedings and defend himself against legal proceedings in order to assert or defend all or part of the rights conferred pursuant to this Agreement; and
- p) the right to collect all income, revenues, royalties and payments as well as any damages, claims, amounts awarded pursuant to a judgment. The content provider will have the right to collect all revenue, royalties and payments with the exception of the leasing and selling of content.

#### 2.04 Duration of the Rights Conferred

The Intellectual Property Rights, Titles and Interests in and to the Web Content conferred by the Content Provider upon the Developer pursuant to this Agreement shall remain in effect indefinitely and for lifetime. However it is agreed that notwithstanding the termination of this agreement, Developer shall continue to have the specific rights granted to it with regards to content which has already been edited and compressed as per the term of this agreement.

#### 2.05 Geographical Scope of the Rights Conferred

The Intellectual Property Rights, Titles and Interests in and to the Web Content conferred by the Content Provider upon the Developer pursuant to this Agreement shall be valid worldwide, subject to the obligation to register such Right, Title or Interest in a given jurisdiction.

#### 2.06 Mandatory Incorporation

Notwithstanding any other provision hereof to the contrary, the above-mentioned rights as well as all other rights provided for in this Agreement shall be conferred upon the Developer only on condition that the Web Content is incorporated into the Web Site or any other web site hosted or administered by the Developer.

### 3.00 CONSIDERATION

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Content Provider	Developer

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**3.01 Definitions**

For the purposes of these presents the following expressions shall have the following definitions;

Revenues: shall be defined as income generated from memberships and upsell;

Operation expenses: shall be defined as the aggregate of bandwidth fees, advertising and processing fees, technical and customer support

Profits: shall be defined as Revenues less operating expenses

**3.02 Profit sharing**

In consideration for the above-mentioned license, the Developer and the Content Provider shall share in the net profits generated by the pay sites and the reselling to webmaster of the Web Content as follows:

- a) Net profits generated from pay sites shall be divided 30% to Developer, 70% to Content Provider; and
- b) Net Profits generated from re-selling to webmasters shall be divided 50% to Developer and 50% to Content Provider.

**3.03 Capital expenditures**

It is agreed to by both parties that any further expenses, such as affiliate program, the employment of additional staff deemed necessary to render the pay site of [www.peternorth.com](http://www.peternorth.com) more profitable shall be made only if the content provider agrees to such decisions. If such a decision is made the cost shall be paid out of the revenues generated.

**4.00 SPECIFIC PROVISIONS****4.01 Representatives of the Parties**

Each of the Parties acknowledges that the person designated by it in this agreement shall have full authority to take all steps, make all decisions and give all consents required with respect to the performance of this Agreement.

**4.02 Electronic Communications**

The Parties' representatives may communicate between themselves by electronic means or by telephone and/or by telecopier.

**4.03 Obligations of the Content Provider**

The Content Provider undertakes as follows in favour of the Developer:

- a) it shall supply and deliver to the Developer web content including pictures and videos as well as special footage such as video presentations, biographies and special pictures
- b) the Content Provider shall also take all reasonable steps to mark and identify with the web site address [www.peternorth.com](http://www.peternorth.com), any other product (such as DVD's or VHS) which it could sell or distribute or have sold or distributed by third parties.

**4.04 Obligations of the Developer**

The Developer undertakes as follows in favour of the Content Provider:

- a) it shall provide software and hardware to develop, program and design the web site;
- b) it shall edit and compress all videos and pictures provided by the Content Provider;
- c) it shall provide indexation of the search engines;

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Content Provider	Developer

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- d) it shall see to the promotion and advertising of the site with free videos, banners, etc.
- e) It shall inform the Content Provider forthwith of any defect or problem affecting the Web Content and it shall actively participate in identifying and seeking a solution to the problem;

#### 4.05 Intellectual Property

##### 4.05.01 Definitions

For purposes of this Agreement:

- "Intellectual Property Right, Title and Interest" shall include, without limitation, any intellectual property right, title and interest, including any derivative right, moral right and personal right, in and to the following:
  - a) any work, performance, picture, videotaping, invention, trademark, integrated circuit topography, confidential information or trade secret, as the case may be;
  - b) any certificate which registers, grants or acknowledges ownership or interests in any of the intellectual rights in question; and
  - c) any request for the registration, granting or acknowledgement of ownership or interests in any of the intellectual property rights in question.

##### 4.05.03 Respect of Third Party Intellectual Property (By the Content Provider)

The content of the Web Content shall be entirely original and shall not infringe any third party Intellectual Property Right, Title or Interest. If all or part of the content have been designed, in whole or in part, by a third party, or if a third party has an Intellectual Property Right, Title or Interest in and to such content, the Content Provider shall obtain the appropriate rights allowing it, among others, to use the said content (or part thereof) and to assign the right to use and modify same to the Developer, if applicable. If the Content Provider fails to abide by all or part of any of the obligations set forth hereinabove, it shall do the following:

- a) it shall indemnify the Developer from and against any damages suffered by it;
- b) it shall take up the defence of the Developer if the latter is impleaded in, or made a party to, any legal proceedings instituted by a third party and alleging the actual or threatened infringement or unlawful use of any Intellectual Property Right, Title or Interest, and the Content Provider shall indemnify the Developer and hold it harmless from and against the principal amount and interest of any monetary order which is issued, as well as from and against all judicial and extrajudicial costs incurred by the Developer as a result thereof; and
- c) it shall replace the content used unlawfully with completely original content or with content with respect whereof the Content Provider has an Intellectual Property Right, Title or Interest, which content shall have the same functions as the unlawful content, the whole forthwith and at the Content Provider's expense.

##### 4.05.04 Specific Undertakings of the Developer

The Developer undertakes as follows in favour of the Content Provider:

- a) it shall not, directly or indirectly, contest, usurp or infringe any of the Intellectual Property Rights, Titles and Interests of the Content Provider or third party developers, nor shall it participate in or facilitate the commission of such acts;
- b) it shall not lease, lend or publish the Web Content, give access thereto or otherwise make same available to anyone whomsoever, except in accordance with the provisions of this Agreement;
- c) it shall not use, register or file an application for the registration of any trademark which causes confusion or is likely to cause confusion with any trademark belonging to the

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Content Provider	Developer

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- Content Provider or third party developers, nor shall it participate in, or facilitate the commission of such acts;
- d) it shall respect all Intellectual Property Rights, Titles and Interests belonging to the Content Provider, third party developers and all other third parties;
  - e) it shall comply with all applicable laws, regulations, treaties and restrictions, in particular those relating to the export of certain Web Sites;
  - f) it shall comply with all of the Content Provider's requirements and policies regarding the protection of the Intellectual Property Rights, Titles and Interests of the Content Provider or third party developers in and to the Web Content and the trademarks, as well as in and to any confidential information or materials;
  - g) it shall notify the Content Provider forthwith of any real or threatened infringement of any Intellectual Property Right, Title or Interest belonging to the Content Provider or to third party developers of which the Developer is aware.

#### 4.05.05 Consequences of Failing to Comply with Undertakings

Subject to all the Content Provider's other rights and recourses, the Content Provider shall be entitled to terminate this Agreement, without notice or demand, in any of the following cases:

- a) if the Developer does not comply with all or part of its undertakings as set forth hereinabove; or
- b) if the Developer does something or fails to do something such that the consequences of such commission or omission adversely affect or are likely to adversely affect the Intellectual Property Rights, Titles and Interests of the Content Provider, third party developers or other third parties.

However, it is agreed that notwithstanding the termination of this agreement for any reason whatsoever, the Developer shall be entitled to continue to use and shall have the right to continue to exploit, for commercial profit, the Web Content it has already edited and compressed. In this case all profits generated by the pay sites or the webmaster re-selling, shall be distributed 50%-50% between the Developer and the Content Provider.

#### 4.05.06 References to Intellectual Property Rights and Credits

References to intellectual property rights and credit for development of the Web Content by the Content Provider shall comply with the Content Provider's specifications.

#### 4.05.07 Protection of Intellectual Property Rights Vested in the Developer

The Content Provider shall provide its reasonable assistance to the Developer, at the latter's expense, as regards the Developer's efforts to protect or assert any Intellectual Property Right, Title or Interest which the Developer may acquire pursuant to this Agreement. In particular, but without limiting the generality of the foregoing, the Content Provider shall sign any document and provide any authorization or consent:

- a) which gives full effect to any grant, assignment or waiver of an Intellectual Property Right, Title or Interest in favour of the Developer or any person designated by it; and
- b) which allows the Developer or any person designated by it to obtain confirmation of such Intellectual Property Right, Title or Interest, in any country whatsoever.

#### 4.06 Confidentiality and Non-Disclosure Undertaking

The Developer acknowledges that certain Information Elements provided and to be provided by the Content Provider are or may be significantly strategically important and, therefore, constitute trade secrets for purposes of this Agreement. During the term of this Agreement and for a further period of SIX (6) months following the termination thereof, the Developer undertakes to do the following in favour of the Content Provider, except as regards the Information Elements which are to be posted on the Content Provider's Web site and those forming part of the public domain:

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Content Provider	Developer

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- a) it shall keep the Information Elements confidential and not disclose same;
- b) it shall take and implement all appropriate measures to preserve the confidential nature of the Information Elements;
- c) it shall not communicate, transmit, exploit or otherwise use the Information Elements, whether for its own behalf or on behalf of third parties; and
- d) it shall take all appropriate measures to ensure that its partners, shareholders, directors, representatives, agents, mandataries, officers, employees and related persons maintain the confidential nature of the Information Elements for the Content Provider's exclusive benefit.

Moreover, the Developer shall not mention to a third party or discuss with a third party the existence of this Agreement or its object or content, unless the Developer has obtained the Content Provider's prior written authorization (which authorization may be refused without reason) or unless such mention or discussion is made or carried out in accordance with the provisions of this Agreement.

#### 4.08 Reciprocal Undertaking Not to Solicit Personnel

During the term of this Agreement and for a further period of TWELVE (12) months following its termination, each of the Parties shall not, directly or indirectly, solicit, employ, hire or otherwise retain the services of any of the other Party's employees. If a Party fails to abide by this obligation, it shall immediately pay to the other Party, as a penalty, an amount equal to TWELVE (12) months of remuneration for the employee in question at the time of the default.

#### 4.10 Representations and Warranties of the Content Provider

The Content Provider represents and warrants as follows in favour of the Developer:

- a) it has the capacity to bind itself pursuant to this Agreement, which capacity is not limited in any manner whatsoever by any undertaking whatsoever in favour of a third party;
- b) it is the sole owner, with good and valid title, of all the Intellectual Property Rights, Titles and Interests in and to the Web Content;
- c) its Intellectual Property Rights, Titles and Interests are not been contested, in whole or in part, by anyone whomsoever at the time of signing of this Agreement;
- d) it is the only one responsible for the validity of its Intellectual Property Rights, Titles and Interests;
- e) it is not a party to any agreement which is likely to affect the Web Content or the Content Provider's Intellectual Property Rights, Titles and Interests in and to the Web Content;
- f) the Web Content and the Content Provider's Intellectual Property Rights, Titles and Interests in and to the Web Content are free and clear of all hypothecs, mortgages, liens, security, liens, seizures and other charges whatsoever which might encumber them;
- g) it is the only one responsible for the design, development, operation and performance of the Web Content;
- h) the Web Content shall operate properly and in accordance with the Specifications, subject to any minor corrections which may be required from time to time;
- i) the Web Content shall execute the functions set forth in the documentation and perform in accordance therewith;
- j) the Web Content shall comply with all applicable laws, regulations, treaties and restrictions;
- k) the Web Content does not form part of the public domain;
- l) neither the Web Content nor any of its components shall infringe any third party Intellectual Property Right, Title or Interest;
- m) the Web Content does not allow anyone to damage or have unauthorized access to Web Sites, data or computer or telecommunications equipment.

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Content Provider	Developer



**4.12 Limitation of Liability**

Except in the event of gross negligence on the part of the Content Provider, the Content Provider shall not be liable towards the Developer for any fault or any direct or indirect damage resulting therefrom, and the Developer shall indemnify the Content Provider and hold it harmless from and against all claims, including all claims under a warranty, in any of the following cases:

- modifications made to the Web Content by a person other than the Content Provider or a person reporting to the Content Provider;
- the loss of business opportunities or income relating to the use or failure to use the Web Content.

**4.13 Interest**

All amounts owed by the Developer to the Content Provider pursuant to this Agreement shall bear interest at a rate of TWELVE percent (12%) per annum as of their due date.

**4.14 Change of Tax Rates or New Taxes**

If the rate of any applicable tax is changed or if a new tax is added during the performance of this Agreement, any such new rate or new tax shall be applicable, and the total price shall be adjusted accordingly.

**5.00 GENERAL PROVISIONS**

Unless otherwise stated in this Agreement, the following provisions shall apply.

**5.01 "Force Majeure"**

Neither party shall be considered to be in default pursuant to this Agreement if the fulfillment of all or part of its obligations is delayed or prevented due to "force majeure". "Force majeure" is an external unforeseeable and irresistible event, making it absolutely impossible to fulfill an obligation.

**5.02 Severability**

If all or part of any section, paragraph or provision of this Agreement is held invalid or unenforceable, it shall not have any effect whatsoever on any other section, paragraph or provision of this Agreement, nor on the remainder of the said section, paragraph or provision, unless otherwise expressly provided for in this Agreement.

**5.03 Notices**

Any notice intended for either Party shall be deemed to be validly given if it is in writing and is sent by registered or certified mail, by bailiff or by courier service to such Party's address as set forth in this Agreement, or to any other address which the Party in question may have indicated in writing to the other Party. A copy of any notice sent by e-mail shall also be sent according to one of the above-mentioned delivery modes.

**5.04 Headings**

The headings in this Agreement have been inserted solely for ease of reference and shall not modify, in any manner whatsoever, the meaning or scope of the provisions hereof.

**5.05 Schedules**

The Schedules to this Agreement shall be deemed to form an integral part hereof if they have

AB	CH
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been duly initialed by all the Parties.

**5.06 No Waiver**

Under no circumstances shall the failure, negligence or tardiness of a Party as regards the exercise of a right or a recourse provided for in this Agreement be considered to be a waiver of such right or recourse.

**5.07 Cumulative Rights**

All rights set forth in this Agreement shall be cumulative and not alternative. The waiver of a right shall not be interpreted as the waiver of any other right.

**5.09 Amendments**

This Agreement shall not be amended or modified except by another written document duly signed by all the Parties.

**5.10 Number and Gender**

Where appropriate, the singular number set forth in this Agreement shall be interpreted as the plural number, and the gender shall be interpreted as masculine, feminine or neutral, as the context dictates.

**5.11 No Right to Transfer**

Neither of the Parties may, in any manner whatsoever, assign, transfer or convey its rights in this Agreement to any third party, without the prior written consent of the other Party.

**5.12 Calculating Time Periods**

In calculating any time periods under this Agreement:

- a) the first day of the period shall not be taken into account, but the last one shall;
- b) the non-judicial days, i.e. Saturdays, Sundays and public holidays, shall be taken into account; and
- c) whenever the last day is a non-judicial day, the period shall be extended to the next judicial day.

**5.13 Currency**

The currency used for purposes of this Agreement shall be in American (US) dollars.

**5.14 Governing Law**

This Agreement shall be construed and enforced in accordance with the laws in force in the state of California.

**5.15 Election of Domicile**

The Parties agree to elect domicile in the judicial district of Los Angeles, California for the hearing of any claim arising with respect to the interpretation, application, performance, term, validity or effects of this Agreement.

**5.16 Counterparts**

Each counterpart of this Agreement shall be considered to be an original when duly initialed and signed by all the Parties, it being understood, however, that all of these counterparts shall constitute one and the same Agreement.

**5.17 Successors**

This Agreement shall bind the Parties hereto as well as their respective successors, heirs and

ATB	CH
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assigns.

#### 5.20 Language

The Parties hereto have expressly agreed that this Agreement as well as all other documents relating thereto be drawn up only in English. Les parties ont expressément convenu que ce contrat de même que tous les documents s'y rattachant soient rédigés en anglais seulement.

#### 6.00 EFFECTIVE DATE

This Agreement shall become effective as of the date of signing.

#### 7.00 TERM

The term of this Agreement shall be for TWELVE (12) months from the date of signing, renewable annually, automatically at its anniversary date, unless one of the parties notifies the other party in writing, of its intention not to renew this agreement, at least THREE (3) months before the end of the initial term or at least THREE (3) months before the end of any renewal period thereafter.

#### 8.00 TERMINATION

##### 8.01 Grounds

This Agreement shall terminate in any of the following circumstances:

- a) upon the expiry of the period of protection afforded at law;
- b) upon the written consent of the Parties;
- c) if a Party fails to fulfil any of its obligations hereunder and does not remedy the default within a period of TWENTY(20) days following receipt by the said defaulting Party of a formal notice asking it to remedy the default or within such shorter delay as is provided for in this Agreement; or
- d) if either Party becomes bankrupt or insolvent, or ceases to carry on business.

##### 8.02 Effects

If this Agreement is terminated:

- a) any license conferred upon the Developer pursuant to this Agreement shall terminate immediately save and except for Developer's right to keep any edited and compressed scenes and the right to continue to use said scenes for commercial profitability over the internet; and
- b) any amount which is still owed to the Content Provider shall become payable immediately.

Nonetheless, termination of this Agreement shall not affect the rights or obligations of the Parties with respect to confidentiality, intellectual property, limitation of warranty or limitation of liability, which rights and obligations shall survive the termination of this Agreement.

##### 8.03 Obligations of the Developer

If this Agreement is terminated for any reason whatsoever, the Developer shall stop using the Web Site [www.petemorth.com](http://www.petemorth.com);

The Content Provider reserves all its rights and recourses against the Developer, including the right to seek an injunction and/or damages, if the Developer refuses or fails to fulfill any of the obligations set forth in this Article within the stipulated deadline.

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Content Provider	Developer

FROM :

FAX NO. :

Jul. 23 2002 03:25PM P1

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AND THE DEVELOPER HERETO HAS SIGNED AT MONTREAL, PROVINCE OF QUEBEC  
CANADA ON THIS 23 DAY OF July 2002.

THE CONTENT PROVIDER

Marie Lachance  
WITNESS MARIE LACHANCE

THE DEVELOPER

Claude Hyppolite  
PER: CLAUDE HYPPOLITE

AND THE CONTENT PROVIDER HERETO HAS SIGNED AT LOS ANGELES, CALIFORNIA U.S.A,  
ON THIS 23 DAY OF July 2002.

\_\_\_\_\_  
WITNESS

THE CONTENT PROVIDER

Alden Brown  
MR. ALDEN BROWN  
A.K.A. PETER NORTH

AB	CH
Content Provider	Developer